SUPREME COURT OF THE UNITED STATES.

No. 142.

A. HOWARD RITTER, EXECUTOR OF WILLIAM M. RUNK, DECEASED, PLAINTIFF IN ERROR,

US.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, September Term, 1895.

HOWARD A. RITTER, Executor of the Estate of Wm. M. Runk, Deceased, Plaintiff in Error,

No. 2.

THE MUTUAL LIFE INSURANCE — OF NEW YORK.

In error to the circuit court of the United States in and for the eastern district of Pennsylvania.

Filed May 25, 1895.

UNITED STATES OF AMERICA, 88:

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk, deceased, and the Mutual Life Insurance Company of New York, a corporation of the State of New York, a manifest error hath happened, to the great damage of the said A. Howard Ritter, executor, &c., as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the third circuit, together with this writ, so that you have the same at the city of Philadelphia within thirty days, in the said United States circuit court of appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 30th day of April, in the year of our Lord one thousand eight hundred and

ninety-five.

SAMUEL BELL,

Clerk of the Circuit Court of the United States, Eastern District of Pennsylvania.

Allowed by— WM. BUTLER, J. UNITED STATES OF AMERICA, 88:

The President of the United States to the Mutual Life Insurance Company of New York, Greeting:

You are hereby cited and admouished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia within thirty days, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit, wherein A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk,

deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not

be done to the parties in that behalf.

Witness the Honorable William Butler, judge, holding circuit court of the United States this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

WILLIAM BUTLER, J.

PHILADELPHIA, May 6, 1895.

We hereby accept service of the within citation, and request the clerk to enter an appearance for the defendant.

C. P. SHERMAN, JOHN G. JOHNSON, Per S.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Deceased, a Citizen of the State of Pennsylvania,

No. 51. October Session, 1892.

THE MUTUAL LIFE INSURANCE Company of New York, a Corporation of the State of New York.

UNITED STATES OF AMERICA, Eastern District of Pennsylvania, 88:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1892, No. 51.

It is thus contained:

Be it remembered that on the tenth day of May, in the year of our Lord one thousand eight hundred and ninety-five, A. Howard Ritter, executor of the estate of William M. Runk, deceased, a citizen of the State of Pennsylvania, by George Tucker Bispham, Esquire, his attorney, comes into our court here and sues therefrom a writ of summons against the Mutual Life Insurance Company of New York, a corporation of the State of New York, which with its return is in the words and figures following, to wit:

UNITED STATES

Eastern District of Pennsylvania, sct:

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you, that you summon the Mutual Life Insurance Company of New York, a corporation of the State of New York, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia, on the first Monday of March next, to answer to A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk, deceased, in a plea of assumpsit. And have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this tenth day of February, A. D. 1893, and in the one hundred and seventeenth year of the Independence of the United States.

> SAMUEL BELL, Clerk of Circuit Court U. S.

Endorsed: No. 51. Circuit court, October session, 1892. A. Howard Ritter, ex'r of estate of Wm. M. Runk, dec'd, vs. The Mutual Life Ins. Co. of New York. Summons assumpsit. Returnable on the first Monday of March next. G. Tucker Bispham, attorney for plaintiff.

We accept service of the within writ and request the clerk to enter our appearance for defendant.

17 Feb., 1893.

C. P. SHERMAN. JOHN G. JOHNSON.

Plaintiff's Statement of Claim.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Deceased, a Citizen of the State of Pennsylvania, October Sessions, 1892.

THE MUTUAL LIFE INSURANCE COMpany of New York, a Corporation of the State of New York.

No. 51.

Plaintiff's statement of claim.

The plaintiff brings this action to recover from the defendant the sum of seventy-five thousand dollars, with interest thereon from the 14th day of October, 1892, due the plaintiff by the defendant under

the following circumstances:

On the tenth day of November, 1891, the defendant, The Mutual Life Insurance Company of New York, entered into contracts of insurance upon the life of William M. Runk, of the city of Philadelphia and State of Pennsylvania, and issued to the said William M. Runk six certain policies of insurance upon the life of the said William M. Runk, all bearing date on the said tenth day of November, 1891; four of the said policies being for ten thousand dollars each, one for fifteen thousand dollars, and one for twenty thousand dollars. The amount of such insurance being in all seventy-five thousand dollars.

In and by each of the said policies the defendant agreed and contracted, in consideration of the payment by the said William M. Runk of certain annual premiums named in each one thereof, to pay to the executors, administrators or assigns of the said William M. Runk the sum named in each of said policies respectively upon proof of the death of the said William M. Runk. No assignment or disposition by will or otherwise of any of the said policies, or of any interest or title therein, was made by the said William M.

Runk.

All of the said policies of insurance are in the possession of the plaintiff as executor aforesaid, and copies thereof are hereto attached

and made part of this statement of claim.

The said William M. Runk paid the premium upon all of said policies to the said defendant, as required by the terms of the contract therein contained, up to the time of his death, as hereinafter set forth.

On or about the 5th day of October, 1892, the said William M. Runk died at St. David's, in the county of Montgomery, State of Pennsylvania. Prior to the death of the said William M. Runk he had duly made and published his last will and testament, dated the 8th day of Decem er, A. D. 1890. In and by the said will the said testator did nam and appoint his wife, Evelyn T. B. Runk, and A. Howard Ritter, his executors and trustees under the said will. The said Evelyn T. B. Runk, subsequent to the death of the said William M. Runk, renounced her office as said executor and trustee, and the said A. Howard Ritter thereby became sole executor and trustee under the will of the said William M. Runk.

The said will was duly probated in the office of the register of wills for the city and county of Philadelphia, and letters testamentary thereon were granted to the said A. Howard Ritter on the

8th day of October, 1892.

Thereafter, to wit, upon the 14th day of October, 1892, the said A. Howard Ritter, as said executor, submitted and furnished to the agents of the Mutual Life Insurance Company of New York, due proofs in writing of the death of the said William M. Runk, in accordance with the terms of the said policies, and demanded from said The Mutual Life Insurance Company of New York the payment by it of the amounts of each of the said policies, to wit, the sum of seventy-five thousand dollars in all. The said policies in

the said amount thereupon became and were due and payable by the defendant to the plaintiff.

The said The Mutual Life Insurance Company of New York, nevertheless, refused and continues to refuse to pay

the amount due the plaintiff as said executor upon the said policies. Wherefore the plaintiff brings this suit to recover from the defendant the amount named in each of the said policies, amounting in all to the said sum of seventy-five dollars, with interest thereon from the said 14th day of October, 1892, the date of the said demand.

GEO. TUCKER BISPHAM, J. H. BARNES,

Attorney- for Plaintiff.

STATE OF PENNSYLVANIA, County of Philadelphia. 88:

A. Howard Ritter, being duly sworn according to law, deposes and says that he is the plaintiff in the above-named action, and that the facts set forth therein are true.

A. HOWARD RITTER, Executor.

Sworn and subscribed before me this twenty-eighth day of August, A. D. 1893.

SEAL.

CHAS. F. MYERS, Notary Public.

Man's life-annual premium, \$782.00.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-years' distribution policy.

No. 472,692.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$20,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, twenty thousand dollars, upon acceptance of satisfactory proofs at its home office of the death of the said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof.

The annual premium of seven hundred and eighty-two dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance

In witness whereof, the said The Mutual Life Insurance Company of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, President.

R. G. DICKSON, Act'g Ass't Sec'y.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall

be forfeited to the company except as hereinafter provided.

Dividends.-This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue shall share in such distribution of the surplus; and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years; otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by

State of New York. Surrender for cash value.-This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table

of mortality and four per cent. interest, and the surplus, as defined above, will be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered, as above provided, the total cash value may at the option of the policyholder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.-If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy

shall not be disputed.

Notice to the holder of this policy.-No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representa-

tion or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

> 38 B Man's life. Twenty-year dist. Aug., 1891.

Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

Man's life-annual premium, \$391.00.

The receipt of first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

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No. 472,694.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk, during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, President.

R. G. DICKSON,

Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York; but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus; and no other distribution to such policies

shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State

of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

Surrender for life income.-Or, if this policy be surrendered, as above provided, the total cash value may at the option of the policyholder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.-If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid up annuity for life equal to three and one-half per cent, per annum of the amount of the paid-up insurance payments of the annuity to commence one year after the end of said first dividend period.

Incontestability.-It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and places and in the manner stipulated in said policy, and that the requirements of the company as to age and

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military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B. Man's life. Twenty-year dist. Aug., 1891. Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

Man's life-annual premium, \$391.00.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,696.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, President.

R. G. DICKSON,

Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this pelicy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by nonpayment of premium, all payments previously made shall be for-

feited to the company, except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the auniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in any payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid

Surrender for life income.—Or if this policy be surrendered as

above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the

time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum in-

sured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representa-

tion or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed at the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B. Man's life. Twenty-year dist. Aug., 1891. Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

Man's life—annual premium, \$391.00.

The receipt of the first payment of the premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,698.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New

York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators, or assigns, ten thousand dollars, upon acceptance of satisfactory proofs at his home office of the death of said William M. Runk, during the continuance of this policy, upon the following condition, and subject to the provisions, requirements, and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company at its home office in the city of New York, on the tenth day of November in every year during the continuance

of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninetyone.

RICHARD A. McCURDY, President.

R. G. DICKSON, Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years hefore the end of the

first dividend period of twenty years; otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will

be paid therefor in cash.

Surrender for life income.—Or, if this policy be surrendered as above provided, the total cash value may at the option of the policyholder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy

shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.-The company declines to notice any assignment

of this policy until the original assignment or a duplicate 15 or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

> 38 B. Man's life. Twenty-year dist. Aug., 1891.

Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

Man's life-annual premium, \$391.00.

The receipt of the first payment of the premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,700.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance

of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninetyone.

RICHARD A. McCURDY, President.

R. G. DICKSON, Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given

and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly

16 waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter pro-

vided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, After the expiration of the period or may then be drawn in cash. of twenty years hereinabove provided for, the dividend distribution period shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the

State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be

paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered as above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or

any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, to-

gether with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up 17 insurance payments of the annuity to commence one year

after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manuer stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.-No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representa-

tion or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B. Man's life. Twenty-year dist. Aug., 1891.

Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

Man's life—annual premium, \$586.50.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,702.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$15,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, and State of Pennsylvania, his executors, administrators or assigns, fifteen thousand dollars, upon acceptance of satisfactory proofs at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of five hundred and eighty-six dollars and fifty cents shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office, in the city of New York, on the tenth day of November in every year

during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, President.

R. G. DICKSON,

Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be for-

feited to the company, except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the auniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal sur-19 render thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus, as defined above, will

be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered as above provided, the total cash value may, at the option of the policyholder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such sur-

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy

shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of this company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representa-

tion or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assign-

38 B. Man's life. Twenty-year dist. Aug., 1891.

Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.

20 Endorsed: No.51, October sess., 1892, C. C. U. S. A. Howard Ritter, exec'r estate of William M. Runk, deceased, vs. The Mutual Life Ins. Co. of New York. Plaintiff's statement of claim. Filed Aug. 28, 1893. Samuel Bell, clerk. Bispham.

Affidavit of Defence.

Circuit Court of the U.S., Eastern District of Penna.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Dec'd,

October Sessions, 1892. No. 51.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

CITY OF NEW YORK, 88:

William J. Easton, being duly sworn, deposes and says, that he is the secretary of the corporation defendant. As such it is his duty to inform himself concerning matters connected with claims upon insurance policies issued by his corporation. He is informed, believes, and therefore avers, that the corporation defendant has a just and true defence to the whole of the claim sued upon, and that it owes the plaintiff nothing. Its defence is of the following character, which he states not upon his personal knowledge, but upon information and belief. He believes this statement of defence to be true, and that the corporation defendant, upon the trial of the cause, will be able to establish its truth by competent testimony.

The defendant is a corporation duly chartered and organized

under the laws of the State of New York.

1. At or about the time of execution of the seven policies of insurance upon which suit is founded, there were policies of insurance in the possessi- of said Runk, upon his life, to the extent of three hundred and fifteen thousand dollars, which had been issued to him by other insurance companies. Subsequently to the execution of the policies sued upon during the year 1892, additional insurance upon his life was effected by the said Runk to a considerable amount. At or about the time of the death of said Runk the total amount of insurance upon his life, of which he was the holder, was five hundred thousand dollars.

Prior to the time of his decease, and, it is believed, prior to the effecting of said additional insurance of two hundred thousand dollars upon his life, said Runk was indebted in a very large amount by reason of his improper use of moneys which had been intrusted

to him in a fiduciary and in a quasi-fiduciary capacity. The
21 exact amount of this indebtedness it is impossible to state.
It is believed, however, that he was thus indebted to the extent of several thousand dollars. He was insolvent and without resources of his own sufficient to meet the amount of said indebtness. He was confronted with the fear of being convicted of his breach of trust, and he was desirous to protect, pecuniarily, those whom he had injured. He deliberately determined to commit

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

suicide for the purpose of escaping the necessity of meeting those whose confidence he had betrayed and, I believe, with the intention, through moneys which he expected to be paid under his policies of insurance, to liquidate, wholly or in part, the indebtedness owing

by him.

On or about the 5th day of October, 1892, he deliberately committed suicide, intending to kill himself, at a time when he was of sound mind, and in the full possession of his mental faculties. This suicide was not the result of mental unsoundness and was not occasioned by mental unsoundness. It was the deliberate act of a man mentally and morally able to understand all the consequences of his act.

2. The policies of insurance sued upon, contain a reference to the application therefor, which is made a part of the contract of insurance. A copy of this application is hereto attached, which, it is prayed, may be taken as a part of this affidavit. Under the advice of counsel the defendant avers that this application is a part of said contract, and that the contract of insurance was a contract made in the State of New York, and to be interpreted by, and in accordance with, the laws of that State.

3. The policies of insurance sued upon were delivered to the said Runk upon the faith of an independent contract entered into by him, embodied in the said application, to the effect that if such policies should be granted, he, the said Runk, did, "warrant and agree * * * that I will not die by my own act, whether sane or insane, during the said period of two years"—said period of two years

dating from the 6th day of November, 1891.

The said Runk did, within the period of two years, commit a breach of said contract by killing himself, as has been before stated, in the way and manner above recited. By reason of the breach of said contract, and only by reason of such breach, the policy of insurance matured, and damages occasioned by such breach are equivalent in amount to that demanded under the policies.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, By W. J. EASTON, Secretary.

Sworn to and subscribed before me, a commissioner for Pennsylvania in State of New York, duly authorized to administer oaths, this ninth day of September, by the above-named deponent.

Witness my hand and official seal.

ALFRED MACKEY,

[SEAL.] A Commissioner for the Commonwealth of Pennsylvania in New York.

(Here follows application for insurance.)

Endorsed: No. 51. October sessions, 1892. U. S. C. C., E. dist. Penna. A. Howard Ritter, ex'r, &c., vs. The Mutual Life Insurance Company of New York. Affidavit of defence. Filed Sep. 11, 1893. Samuel Bell, clerk. C. P. Sherman. John G. Johnson.

Defendant's Plea.

U. S. C. C.

RITTER, Executor, etc.,

vs.

The Mutual Life Ins. Co. of N. Y.

October Sess., 1892.

No. 51.

Defendant pleads non-assumpsit, payment with leave, etc., and set-off.

C. P. SHERMAN, JOHN G. JOHNSON, For Defendant.

Sept. 25, 1893.

To clerk U. S. C. C.

Endorsed: No. 51. October sess., 1892. U. S. C. C. Ritter, executor, etc., vs. Mutual Life Insurance Co. of New York. Pleas. Filed Sep. 25, 1893. Samuel Bell, clerk. —— Sherman, John G. Johnson, for defendant.

And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the first day of April, A. D. 1895, come the parties aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit:

Collins Dean,
Benjamin W. Pursell,
Nathaniel Adams,
Isaac Wood,
J. Lewis Smith,
Henry Kuntz,

Miles C. Rowland,
John W. Daub,
Chas. G. Knight,
Perry J. Kistler,
Jacob Kettering,

who are duly empaneled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit, on the 5th day of April, A. D. 1895, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendant.

And afterwards, to wit, on the 8th day of April, A. D. 1895, judgment is entered on the verdict in favor of defendant and against the plaintiff.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Term, 1892.

A. Howard Ritter, Executor of the Estate of Wm. M. Runk, Deceased,

No. 51.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

Be it remembered, that in the said term of October, A. D. 1892, came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of assumpsit, etc., in which the said plaintiff declared (pro ut narr.) and the said defendant pleaded (pro ut pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the city of Philadelphia, before the Honorable William Butler, judge of the said court, on the 1st, 2d, 3d and 4th days of April, 1895, the aforesaid issue between the said parties came to be tried by a jury of the said eastern district of Pennsylvania for that purpose duly empanelled (pro ut list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid, impanneled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff and defendant respectively offered the following evidence in behalf of the respective parties, and the court charged the jury and answered certain points submitted to him in the manner hereinafter following.

U. S. C. C.-Butler, J.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Dec'd,

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

Monday, April 1, 1895.

George Tucker Bispham, Esq., J. Hampton Barnes, Esq., Richard C. Dale, Esq., counsel for plaintiff.

John G. Johnson, Esq., Charles P. Sherman, Esq., counsel for defendant.

Plaintiff's Evidence.

Mr. Bispham: With submission to the court, gentlemen of the jury, this suit, as you have heard, is brought by A. Howard Ritter as the executor of the last will and testament of

William M. Runk, deceased, against the Mutual Life Insurance Company of New York, and is brought for the purpose of recovering an amount alleged to be due by the insurance company to William M. Runk's executors on policies aggregating \$75,000.

Mr. Runk, who was a citizen of Philadelphia, a merchant engaged

in business here, died on the 5th of October, 1892, and this action is brought by his executor to recover the amount of these policies.

We shall prove to you in the plaintiff's case but a very few facts. We shall prove the policies, which in fact are admitted; we shall prove the fact of Mr. Runk's death, and, unless some evidence to the contrary be adduced, we shall ask you for a verdict for the amount of the policies.

Mr. Bispham offers in evidence on behalf of plaintiff letter-testamentary issued by the register of wills of Philadelphia county, under date of October 8, 1892, to A. Howard Ritter, plaintiff, on the estate

of William M. Runk, deceased.

Mr. Bispham offers in evidence on behalf of plaintiff also the following policies issued by the company defendant to William M. Runk, of Philadelphia, all bearing date November 10, 1891, and bearing on the backs thereof the stamp, "William H. Lambert, general agent, Philadelphia," the numbers and amounts of said policies being as follows:

No. 472,702 for \$15,000; No. 472,692 for \$20,000;

No. 472,698 for \$10,000; No. 472,696 for \$10,000;

No. 472,694 for \$10,000;

No. 472,700 for \$10,000;
Mr. Bispham next offers in evidence on behalf of plaintiff certificate of George B. Luper, insurance commissioner of the State of Penusylvania, that a license was issued April 1, 1891, to the Mutual Life Insurance Company of New York, authorizing said company to transact the business of life insurance in this State for and during the year ending March 31, 1892; also further showing that William H. Lambert of Philadelphia was duly appointed and authorized to act as agent and attorney in this State for the said Mutual Life Insurance Company of New York.

Mr. Bispham also offers the following agreement of counsel, which

has been signed:

"It is agreed in this case that the execution of the policies sued upon, the payment of the premiums for the same, and that the said policies were forwarded my mail from the main office of the company defendant in New York to the agent of the company at its office in Philadelphia for delivery, be and the same are admitted."

Cornelius Moore, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. Where do you live?

A. No. 829 Vine street, Philadelphia.

Q. What is your business?
A. Undertaker.

Q. Where is your place of business?

A. No. 829 Vine street, Philadelphia.

Q. Did you ever know William M. Runk?

A. Yes, sir.

Q. How long had you known bim?

A. Many years.

Q. He was a member of the firm of Darlington & Runk, engaged in business on Chestnut street?

A. Yes, sir.

Q. Where did Mr. Runk live?

A. At St. David's Q. Where is that?

- A. It is out on the Pennsylvania road. Q. That is, a suburb of Philadelphia? A. Yes, sir; a suburb of Philadelphia.
- Q. Were you sent for to come to Mr. Runk's house early in October, 1892? A. Yes, sir.

Q. Did you go? A. No, sir; I sent my son out.

Q. Did you afterwards go yourself?

A. Yes, sir. Q. When was it that you went there? A. Perhaps two days afterwards.

Q. What did you see when you went there? A. I saw the body of William M. Runk.

Q. He was dead?

A. Yes, sir.

Q. Did you take charge of the funeral?

A. Yes, sir.

Q. The funeral took place and the body was buried?

A. Yes, sir.

Q. Can you fix the date when you went out there? A. About the 7th, I think, of October.

Cross-examined.

By Mr. Johnson:

Q. Did you examine the body?

A. No, sir.

Q. You made no examination whatever?

A. No, sir; I didn't look for anything. 26 Q. Did you not make an affidavit on the 17th of October, 1892, that William M. Runk, the deceased, died by his own hand?

(Objected to.)

Q. (Paper shown witness.) Is that your signature?

A. Yes, sir; that is my signature, but it wasn't from my knowledge.

Q. Did you not make this affidavit? Did you not swear on the 17th of October, 1892, "that deceased died by his own hand," and is not that your signature to that affidavit?

A. Yes, sir. 4 - 142

2 You hardly swore to that without some knowledge of the fact, aid vou?

A. It was only hearsay then.

Q. Do you mean to say you did not see the body itself? You buried it?

A. Yes, sir; I saw the body and I assisted in dressing it.
Q. When you assisted in dressing the body you found the mark of a bullet wound in his head, did you not?

A. No, sir; I didn't see any bullet mark.

Q. What did you see? Was there any disfigurement of his face?

A. I didn't see any disfigurement about the body.

Q. Although you assisted in preparing his body for interment-

A. Yes, sir.

Q. You saw no mark of a bullet wound on his head?

A. No; I did not.

Q. And although you swore that he died by his own hand, you say you examined the man and you did not see that, and that when you swore that he died by his own hand you only swear by hearsay? Is that so?

A. That paper was written out for me.

Q. Who presented that affidavit to you in which you swore to that important fact which you now say you knew nothing about? Who is the man who handed you that to swear to?

A. That I don't know now. What is the date of that affidavit? Q. The 17th of October, 1892. Can you give any explanation of

how it is that you made an affidavit to a fact like that and did not know anything about the fact, and how it is that you examined this body and dressed it, and prepared it for interment and found out nothing about the mark on the forehead, the right temple?

A. I saw no mark in dressing that body. I didn't look for any

mark.

By Mr. BISPHAM:

Q. Your affidavit was only from hearsay?

A. That was all. That was reported by the physician. I dressed the body and saw no mark.

By Mr. Johnson:

Q. Your affidavit does not say it was from hearsay. What hearsay did you rest it on?

(Objected to. Objection sustained.) Plaintiff rests.

Defendant's Evidence. 27

Mr. Johnson: With submission to the court, gentlemen of the jury, the case which you are about to try is a case that is exceedingly important, both in the principles involved and in its own magnitude. The question is whether or not the defendant insurance company in this case shall be made to pay to the estate of William M. Runk this amount of policies, \$75,000, in connection

with the facts which we will show you.

William M. Runk was a merchant in this city, a member of the firm of Darlington & Runk, whose place of business was on Chestnut street above Twelfth, a concern that did a large retail dry-goods business. Mr. Runk occupied in the community a position of great apparent respectability and of solvency. In point of fact he was neither solvent nor respectable. He was a man who at the time these policies were taken out was insolvent to the extent of about \$350,000, at least, and he was insolvent under these circumstances:

He had gotten into very considerable speculations in gambling in stocks, which had been carried on for years, in the course of which he had become very considerably involved, and, as is so often the case, having thus become involved, he had involved those who had entrusted their interests to him. He had taken advantage of his position in the firm of Darlington & Runk to issue notes for his own private benefit to take the funds of that firm by reason of drawing out moneys which he did not pay, and crediting himself, and otherwise, to such an extent that at the time these policies were taken out he was a defaulter to the firm of Darlington & Runk for moneys which he had practically embezzled from the firm to the extent of about \$90,000. He also had obtained from a lady, who was in some way connected with him, an amount of money, some \$130,000 odd, part of which had been obtained under a pretense that the money was to be used for the firm which he had misappropriated in this way.

He was also the treasurer of one of the charities of this city, the city mission, and, commencing a very considerable time back of the taking out of these policies, he had used the funds of that mission which came into his hands, replacing part of those funds by giving, though he had used the money for his own private purposes, the firm notes of Darlington & Runk, and also making believe that he was still in the possession of the assets of that concern by paying interest and keeping up the delusion that the assets were there. He had embezzled the funds of that charity to the extent of over

Therefore, when these policies were taken out, he was insolvent to the extent, as I have said, of upwards of \$350,000, and insolvent by being a defaulter, by having embezzled the funds of the charity of which he was the treasurer and of the firm to which he belonged.

He appeared to - one of those men who would sooner face death than disclosure of his dishonor and his disgrace, and having at the time these policies were taken out some \$250,000 to \$300,000 of policies already on his life, which cost him from \$10,000 to \$12,000

a year to carry, but which were insufficient to pay his debts and to make good his embezzlements, he seemed to have conceived the idea of taking out additional insurance to the e xtent of some \$200,000 more, making his total insurance from \$450,000 to \$500,000, for the purpose of raising a fund which, if the thing came to an end, as was certain, he could by reason of his death

pay these creditors and pay these embezzlements and so clear, as far

as he could, his memory.

Therefore, our claim is, that as this was a deliberate attempt by a man in full possession of his faculties to defraud this insurance company by obtaining these policies to a large amount and then to commit suicide and have his estate collect for the benefit of these

creditors the amount in which he was a defaulter.

We will show you that being, as I say, insolvent to that extent, having already some \$10,000 to \$12,000 per annum to pay to keep up those policies, he contracted these additional policies, including this \$75,000, to the extent of about \$200,000, requiring him, an insolvent man, to pay about \$8,000 a year additional, and of course never intended that those payments, which could not last long, would last long, but that by his deliberate suicide he would end the payment of the premiums and acquire for his estate the amount of the policies.

We will show you, in addition to these facts, which show inferentially, in a way that business men must concede, the inference of a deliberate attempt to defraud, and that he wrote letters to his executor and others in which he said he committed suicide for the purpose of paying his debts and his defaults by the insurance

money.

There are the written admissions by him of the intent with which he did this thing, which we will put in evidence, and we will ask you, therefore, under that head of the defense to find that this man attempted to defraud these companies, that he attempted to take advantage of an insurance which was meant for the honest, that he meant to take advantage of it for the purpose of clearing up his name, which he had disgraced, and paying the people whom he was desirous of paying, and, under the instructions of court, we will ask you to put your stamp of disapproval upon that.

We will show you that at the time these policies were entered

into William M. Runk signed this agreement.

Mr. BISPHAM: I presume the agreement is the application. I contend that that application is not evidence, if it is offered in evidence, and before that question is decided the language of the application had better not be read to the jury.

The Court: I do not think I can interfere with the opening.

Mr. Johnson: Of course you do not deal with matters of law. That comes from the court. At the time of the execution of this policy William M. Runk entered into this agreement:

"I hereby warrant and agree not to reside or travel in any part of the torrid zone and not to engage in any specially hazardous occupation or employment during the two years following the date

of the issue of the policy for which application is hereby made, and also not to engage in any military or naval service in time of war during the continuance of the policy without

first obtaining permission from the company.

I also warrant and agree that I will not die by — own act, whether sane or insane, during said period of two years."

That will, of course, go largely to you under the instructions of

law which you will have to follow. But there is the agreement on which this contract was entered into, that he would not die by his own hand, sane or insane, within two years, and within nine months after we accepted his agreement and issued the policy, he, in pursuance as we say of this carefully arranged plan, committed suicide.

A. Howard Ritter, called for cross-examination, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. You are the executor of the late William M. Runk, are you?

A. Yes, sir.

Q. You have a letter which was written to you, which you received shortly after his death, have you?

A. I haven't the letter; no, sir. I did receive a letter.

Q. How soon after his death did you first see him, and where?

A. I never saw him after his death.

Q. How soon after his death did you receive this letter? A. The morning after his death.

Q. Who handed it to you?

A. Mr. Darlington.

Q. Joseph G. Darlington, his partner?

A. Yes, sir.

Q. Was it sealed?

A. My recollection is it was; yes, sir.

Q. Was it addressed to you?

A. Yes, sir.

Q. It was all in the handwriting of William M. Runk, was it?

A. Yes, sir.

Q. And signed by him?

A. Yes, sir.

Q. What became of that letter? Of course you as executor appreciated the very great importance of that letter, did you not?

A. I didn't think it was particularly important to any one but to

Q. Did you or did you not think it was important?

A. No; I didn't think it was important. However, I placed it with certain of the papers belonging to the estate, with all of Mr. Runk's papers, I may say, in one safe, in which I kept them, at the office. I never noticed that it was not there until about three weeks after his death, when, in looking over the papers, the envelope in

which it had been enclosed I found was gone. Q. Who had access to that safe? Was it a combination lock safe?

A. Yes, sir.

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Q. Who had access to the combination?

A. My book-keeper and myself.

Q. No one but your book-keeper and yourself?

A. No, sir.

Q. Now I may take it that you inquired from your book-keeper? A. I did, very carefully.

Q. Had he gone to the safe or examined those papers?

A. He had had no occasion, he said, to take anything out except

the check book and the bank book.

Q. Then how did you satisfy yourself, or what did you satisfy yourself of, concerning the disappearance of that letter which was amongst the papers? Were any of the papers missing?

A. No, sir; nothing else that I can recollect particularly. That

was certainly the most important thing that was missing.

Q. So far as you now recall, out of this safe into which you put the bulk of the papers, including this letter, nothing was missing but this letter?

A. No, sir.

Q. Before you put the letter in, then, as you did not think it of any importance, had you done anything with it? Had you shown it to anybody?

A. Not to my recollection; no, sir.

Q. You never saw it from the time you put it in until the present time?

A. I have no recollection of ever having read it but once; that

was when Mr. Darlington handed it to me.

Q. Did it go out of your possession at any time after your receipt of it and before you had found it disappeared?

A. Certainly not; no, sir.

Q. How did a copy of it come to be made?

A. I don't know.

Q. There is a copy extant, is there not?
A. Mr. Bispham informed me there was.

Q. Give us the best information you can covering the fact that you put it in the safe to which you and your book-keeper alone had access, that some three weeks afterwards you missed it, that you had shown it to nobody and made no copy of it, and yet that there is a copy of it extant.

A. I can give you no information at all about it. I never knew that there was a copy in existence until two weeks ago, when Mr. Bispham told me it was in existence. I didn't make any copy.

Q. You did not cause any copy to be made?

A. No, sir.

Q. After you learned that there was this copy in existence of the paper that thus disappeared, did you make any effort to find out how that copy came into existence?

A. No, sir.

Q. Have you any explanation now to make of the manner in which that extraordinary result has been reached?

A. No, sir; none whatever. I can identify the copy if you have it there.

Q. This paper was handed to you by Joseph G. Darlington?

A. Yes, sir.

Q. Who delivered to you the other papers of Mr. Runk?

A. All were in envelopes.

Q. All the papers that were put in this fire-proof were in one envelope?

A. Oh no, no, sir. Mr. Farr handed them to me.

Q. Who was he?

A. He was Mr. Darlington's head book-keeper. I went down into Mr. Runk's little room and opened the safe there and took the papers that were there, the insurance policies, etc.

Q. Had he a private safe at Darlington & Runk's?

A. No, sir.

Q. It was in the firm's safe?

A. He had a compartment in the firm's safe.

Q. However, this letter was handed specially by Mr. Darlington The other papers that you put in your fire-proof were to vou. gathered by you in the presence of Mr. Farr, the head book-keeper, from the safe of Darlington & Runk? A. Yes. sir.

Q. How soon after the death did you gather those papers?

A. I think I took them away the day after Mr. Runk's death, when Mr. Joseph G. Darlington had handed me this letter; within an hour or so.

Mr. Johnson calls for the production of the copy of the letter referred to, the same being produced.

(Recess until 2 p. m.)

2 P. M.

Cross-examination of A. Howard RITTER resumed.

By Mr. Johnson:

Q. (Paper shown witness.) Do you know whose writing that is? A. That is Mr. Farr's writing.

By the COURT:

Q. Who is Mr. Farr?

A. He is the book-keeper of Darlington & Runk.

By Mr. Johnson:

Q. Your place of business was entirely separate from Darlington & Runk?

A. No. 729 Walnut street; yes, sir,

Q. This letter, as I understood, was addressed to you?

A. Yes, sir.

32 Q. And handed to you by Mr. Darlington the morning after the death?

A. Yes, sir.

Q. Was it sealed?

A. I stated it as my recollection that it was sealed. Q. And never handed back to Mr. Darlington?

A. No. sir.

Q. Nor to Mr. Farr?

A. No, sir.

Q. So that as to how Mr. Farr, the book-keeper of the firm, got a copy of the letter, you do not know?

A. No, I do not.

The copy of said letter is as follows:

A. H. Ritter, Esq.

MY DEAR FRIEND: In one of the early clauses of my will I direct all my debts and loans shall be paid.

I will try to enumerate the indebtedness in the order to be paid. First. My account in the firm is overdrawn \$86,000, which I want

replaced with first insurance amounts that you receive.

Second. I have left in the small closet in the safe a list of amounts I owe to make P. E. City mission account good \$20,000; is in notes of \$10,000 each, signed by D. R. & Co., and endorsed Mary A. Barcroft; this I owe and please pay. Then several securities have matured and I owe for them as enumerated. These are also referred to. I have some in loan with Beneficial Saving Fund Society and Pa. Co., please redeem and restore.

Third. I owe Mrs. Barcroft 96 M \$30,000, in securities for which

she holds life insurance policies; please adjust these.

The 10,000 B. & P. bonds are I think at Beneficial S. F. 46 " Phila. S. F. 12,000 N. & Western "

5,000 P. & R. " " " " " " " 5,000 " " " \$3,000. Hilbreth, Far & Co., N. Y. Phila. office, C. D. Barney & Co.

\$2,000. Tucker & Co., Phila.

Of course, the 126,000 or 128 will be arranged with insurance money.

Fourth. I have accounts with— W. G. Hopper & Co., Phila.

R. E. Tucker & Co.,

Bickley, Lee & Johnson, N. Y.; Phila. office, 426 Library.

Kilbreath Far & Co., C. D. Barney & Co. " 66 Chas. Minzesheimer, 3d and Chestnut.

I have marked on each account accompanying this where the securities belong that they hold.

Fifth. This should be third, and so I order it paid. I owe my mother 52 shares P. R. R. Co., and 12 shares L. V. R. R. Co.; please

buy and turn over to her.

Sixth. I owe Jennie C. Runk 30 shares P. R. R. Co., with

Hopper & Co.; please return to her.

Seventh. Miss Lena Giles, care C. S. Bucklin, Keyport, N. J., has \$6,000 notes of D. R. & Co. This I owe personally; please pay; interest was paid by me to June 1st, 18

Eighth. I owe Mr. Weightman 20 M; he holds 30 M ins.; much

of it paid up.

All submitted for your guidance.

(Signed)

WM. M. RUNK.

I owe for July income and August income city mission, large black book shows also \$950, as shown by 3 checks in drawer of table in office. You will find B b'k book; I have \$2,500 loan on stock there. Look out for two notes there. See back of check book; two

25 shares of F. B. stock with F. M. Lockwood & Co. belongs to D. R.

List	of	Insurance.

Thousand the second sec	
Travellers'	
Travellers'	
Equitable 20).
Bankers' & Merchante' 15	. 15
Mutual Benefit	
John Hancock 10	
New York Life. 20 New York Life. 100	. 20
New York Life	. 50
Provident	
Provident 100 Ætna 20 State Mutual 15	. 10
State Mutual 15.	7,500
State Mutual 15. Home N. Y. 20. Penn Mutual 50.	
Penn Mutual	
North West 30.	
Connecticut Mut	5
Life Union	
Berkshire 5.	
Berkshire	20
Commercial Alliance	

Penn National bank. Stock intact in safe.
 Girard National bank. Stock intact in safe.

6. Commercial National bank. Stock intact in safe.

8. Mechanics' National bank. Stock intact in safe. 10. Manufacturers' National bank. Stock intact in safe.

12. Camden National bank. Stock intact in safe.

14. City 6's. Paid off; I owe \$400. 16. City 6's. Paid off; I owe \$700.

18. City 6's. Stock intact.

20. Penn. State loan. Paid off; see page 10, cash book. 22. Penn. State loan. Paid off; see page 10, cash book.

24. Ches. & Delaware C. Co. Stock intact.

26. Lehigh C. & N. Co. With Beneficial saving fund; I owe

28. Elmira & W. Intact. 34

30. Hestonville. Paid off; see cash book, page 18. 32. Hestonville. Paid off; see cash book, page 18.

34. Fredericksburg & Gordonsville. In safe.

36. Delaware Division Canal Co. In safe.

38. L. C. & N. Co. In safe.

40. Nes. Valley Co. In safe.42. Delaware & B. B. In safe.

44. Phila. & Erie. In safe. 46. L. V. R. R. Co. In safe.

48 and 120. N. Pennsylvania R. R. In safe.

50. Pennsylvania R. R. With Mr. Bullock, attorney.

52. Union National bank. In safe. 54. Scrip with Hopper. I owe for it.

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- General Passenger Railway Co. With Ben. S. F.; I owe for it.
- 58. Mo. State bond. Paid; see cash book, page 48. 60. P. R. R. Co. With Mr. Bucknell, attorney.

62. North Carolina bonds. In safe.

64. Philadelphia & Reading R. R. Scrip with Hopper. 66. Pitts., C. & St. Louis. With Mr. Bucknell, attorney.

68 and 122. L. C. & N. Co. In safe.

- 70. Philadelphia & Reading R. R. In safe.
- 72. Redeemed.
 74. Redeemed.
 76. Redeemed.
 76. Redeemed.
 76. See cash book, page 20.
 76. See cash book, page 20.
- 78. Portion sold; \$6,000 with P. & Co. I owe for that.

80. Transferred.

82. Stea. & Ind.; \$10,000 redeemed. I owe for them; have been paying 5 per cent. semi-annually.

84. North Central R. R.; \$8,000 with Ben. S. F. I owe for \$2,000 redeemed.

86. P. R. R. In box.

88. Franklinville mortgage. I owe for interest paid by Mr. Taylor.

90. Transferred.

104. Redeemed. See cash book, page 70.

114. P. R. R. In safe.

- 42. 116 Del. & B. B. In safe.46. 118 L. V. R. Co. In safe.48. 120 W. Penn. R. R. In safe.
- 48. 120 W. Penn. R. R. In safe. 68. 122 L. C. & N. Co. In safe.
- 130. Loan ac-ount, \$10,000. I owe for it. 108. Loan ac-ount, \$10,000. I owe for it.

I, Wm. M. Runk, treasurer, am indebted to P. E. City Mission the following amounts, which I direct my executor, A. Howard Ritter, to pay from my estate, viz:

\$400 city loan, with interest.

700 city loan, with interest.
4,000 L. C. & N. bond with Beneficial saving fund. R'g scrip with Hopper.

3,000 General Passenger R'y Co. with Beneficial saving fund.

6,000 P. W. & B. 4's with P. & Co.

10,000 W. & E. redeemed.

8,000 N. C. R. R. with Ben. Co.

2,000 N. C. R. R. redeemed with interest from date.

Amount Mr. Taylor has paid on Franklinville mortgage.

20,000 notes of D. R. & Co.

(Signed)

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WM. M. RUNK.

By Mr. Johnson:

Q. Get the books so that you can turn to the figures which I have given.

A. The books were turned over to the city mission.

Q. All those pages?

A. Yes, sir; that was all returned to the city mission.

(Black book marked "Ledger" shown witness.)

Q. Is that the book you found to which reference was made?

A. Yes, sir; that is the one.

Q. That, of course, you surrendered properly to the city mission? A. Yes, sir.

Q. It was his ledger account with that mission?

A. Yes, sir.

Q. And these pages refer to what had become of those various

securities?

A. Beginning with that fifth page, I think, is the memorandum that was found in the City Mission book. You see giving page 2 there. That was found in the City Mission book. As I understand, that was not in the envelope.

Q. Was not this part of Mr. Runk's memorandum?

A. It was not in the envelope; no, sir.

Q. Where did you find it? A. In the City Mission book.

Q. Inside of the book was the paper which I have now read after pages 4?

A. Yes, sir.

Q. Pages 4, were the letters addressed to you?

A. Yes, sir.

Q. And from pages 5 out referring to the pages in the book that was in the book?

A. Yes, sir; I think that is where I found that.

Q. Was it made out in Mr. Runk's handwriting in the book? A. Yes, sir; as near as I recollect, that is a copy of it.

- Q. Of course, when you took out letters testamentary you looked into his estate and affairs for the purpose of verifying this memo-
- A. I communicated with those people immediately who are named in the paper there, the brokers and the different individuals and the corporations that were named in it.

Q. The first statement made in this, under "I will try to

36 enumerate the indebtedness in the order to be paid," is, "first, my account in the firm is overdrawn \$86,000, which I want to replace with first insurance amount which you receive"?

A. Yes, sir.

Q. You of course looked into his affairs to see if he had overdrawn his account in the firm, did you?

A. Yes, sir.

Q. What did you find with regard to that?

A. We sent an expert up to make a report as to his condition with the firm. We found he was overdrawn there.

Q. To the amount he stated?

A. Yes, sir.

Q. And had he overdrawn that?

A. My recollection is it was made up in two or three different ways.

Q. Give us them.

A. In the first place he had taken moneys, said to have been used for bills; that is, he had charged it up against the bill and used the money himself; he had not paid the bill.

Q. That is, he would charge against the firm cash, as though he had paid out the amounts of designated bills that he had put on the books?

A. Yes, sir. Q. But, in point of fact, he left those bills unpaid and took the money for himself privately; that was one way?

A. Yes, sir. Q. When did that commence?

A. I think about a year before his death. It commenced at that time, I think; I am not certain.

Q. That particular thing?

A. Yes, sir.

Q. Your best recollection is that that particular thing occurred about a year before his death?

A. Yes.

By Mr. BISPHAM:

Q. Are you speaking from your recollection?

A. Simply from the report of the expert.

By Mr. Johnson:

Q. Whom you employed to satisfy you from the books?

A. Yes, sir.

Q. What other method did he adopt by which he became debtor to the firm?

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A. He had been allowed interest on capital, and of course if there was an impairment of capital it was not fair that he shouldn't have had the interest. Therefore there were certain matters overpaid him, and that of course had to be charged back.

Q. He had overdrawn his interest account then?

A. Yes, sir.

Q. What other method was there?
A. That is the only thing I recollect.

Q. How about those notes which had been given in the name of Darlington, Runk & Co. to the city missions?

A. That was a matter of adjustment with the city missions; that did not appear in Darlington, Runk & Company's account.

Q. You found no reference in Darlington, Runk & Company's books of that amount?

A. No, sir. On the contrary, Darlington, Runk & Company had paid those back. They did not owe that money at all.

Q. How do you mean they paid those back?

A. As a payment. It had been paid to the city mission, and

whatever misappropriation it was or whatever became of it he was personally responsible for.

Q. So that was a misuse of the firm's name, because the firm did

not owe it?

A. The firm did owe it at one time, but it had been paid back by the firm.

Q. After the firm paid it back he kept using those notes of Darlington, Runk & Co. as if they had not been paid?

A. I have those notes here, but they were not paid.

Q. Then Darlington, Runk & Co. paid them, but they were not returned to the city mission?

A. No.

Q. Those notes of \$2,000 ran back several years?

A. I don't recollect about that.

Q. Turn to pages 108 and 130 in the black book and see when that thing commenced.

A. The loans appear to have been made in 1886, April, 1886, one

of them, and the other one, I think, in April, 1887.

- Q. And that loan had been repaid by the firm, though not credited to it on the note, which remained some time before his death? A. Yes, sir.
- Q. What did you find after he had been credited with his interest in the firm of Darlington, Runk & Co. with all that was coming to him out of it that he owed the firm?

A. I am afraid I will have to refer to my account for that.

Q. Perhaps the orphans' court account will show you.

(Same shown witness.)

A. This is a copy of the account I filed in the orphans' court. **\$**69,125.

Q. That was swollen in some way to \$86,000. What was the amount you found to be owing to the city mission?

A. About \$80,000.

Q. \$86,000, was it not? A. The exact figures I guess are \$83,000. \$86,000, yes.

Q. In what way had he become indebted to the city mission? He was their treasurer, was he not?

A. Yes, sir.

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Q. And had, as such, charge of their cash and securities?

A. Yes, sir.

(Objected to, unless the witness knows of his own knowledge.) Mr. Johnson: I ask him only of his own knowledge, or from the knowledge of the expert he employed to investigate.

By Mr. Johnson:

Q. In what way were they indebted to the city missions? Some securities had been paid off from time to time, of which he had taken to himself the money?

A. Yes, sir.

Q. He was indebted, of course, on these Darlington, Runk & Co. notes \$20,000?

A. Yes, sir.

Q. There were securities which he had pledged belonging to this city mission for his private debt, were there not?

Q. And that had run back some years before his death, had it not?

A. Yes, sir. Q. What was the amount of his indebtedness to Mrs. Barcroft? About \$136,000, was it not?

A. Yes, sir; she was secured by collateral.

Q. The collateral was policies of life insurance policies, was it?

Q. His indebtedness to her of about \$136,000 was so covered by an assignment of life-insurance policies that that paid his debt?

A. Yes, sir; she was paid.

Q. And when you filed your account and it was adjudicated it was found, eliminating Mrs. Barcroft, who who was paid by money out of life-insurance policies, that he was owing about \$210,000 in addition, was it not?

A. Yes, sir; you are speaking from the account? Yes, I have

no doubt that is correct.

Q. And there was a dividend paid to the creditors almost exclusively out of the life-insurance policies, was there not?

Q. About how much was the worth of his estate as against that \$350,000 or \$360,000, outside of the life-insurance policies?

A. That is a very hard question to answer. If he had been alive his interest in the firm of Darlington, Runk & Co. might have been settled in a very different way.

39 Q. Still, it was settled by his partner, Mr. Darlington?

A. Yes, sir; and, in addition to that, of course his real estate wouldn't have had to be sacrificed. Speaking from the bare facts as you have them in the account, of course I suppose I can only speak of that, the insurance policies undoubtedly formed the bulk of his estate.

Q. Outside of the insurance policies, how much did you derive from his own estate towards payment of this upwards - \$350,000

of debt?

A. I think almost the whole of it was life insurance that was divided. I don't think there was any considerable sum realized from outside. I had no recollection of anything.

Q. When his interest in the firm was realized it was realized by

the liquidating partner, Joseph G. Darlington, was it not?

A. Yes, sir.

Q. Who is one of the large creditors now of the estate?

A. Yes, sir.

Q. And the unpaid indebtedness approximates how nearly to the unpaid life insurance?

A. We have about \$125,000 worth of life insurance unpaid, and

I believe we have about \$100,000 worth, or \$105,000 worth, of unpaid claims.

By the COURT:

Q. Unpaid debts? A. Unpaid debts.

By Mr. Johnson:

Q. So the outlying unpaid life-insurance policies are about equal to the outside unpaid indebtedness?

A. Yes, sir.
Q. And outside of that amount there were some life-insurance policies assigned or put in the name of his wife?

A. There was only one policy held by Mrs. Runk, that I recol-

lect. Two policies.

Q. You found that he had speculative accounts with how many

different brokers?

A. I found an account with Kilbreath, Farr & Co., New York; Minzesheimer & Co., Lockwood & Co., Hopper & Co., Bickley, Lee & Johnson; five, I think.

Q. Those had been running for how long a time?

A. I only saw the last three months' statement. That is the only one I saw.

Q. They were speculative accounts?A. Yes, sir; as far as I could see.

Q. There were some of those accounts that resulted in balances which you admitted against the estate at his death, were there not?

A. Yes, sir.

Q. Amongst the creditors who will get this life-insurance 40 policy, if it is paid, are W. G. Hopper & Co., one of these brokers, \$7,756, Kilbreath, Farr & Co., \$6,304, and Bickley, Lee & Johnson, \$2,504?

A. Yes, that is about right.

Q. So that his unpaid insurance, which is being collected for the benefit of his estate and for which there are debts which will absorb it-the indebtedness includes those three speculative balances?

A. Yes, sir.

Q. I take for granted that you examined those accounts before

you permitted them to be proved against the estate?

A. The final accounting the last two or three months whatever the estate was worth I took as correct. I didn't investigate it back for three or four years.

Q. This is what occurred at the audit: You stated that the fol-

lowing amounts were correct:

Joseph G. Darlington, surviving partner of the firm of Darlington. Runk & Co., a balance due as of October, 1892, \$69,125.07; Mrs. Mary A. Barcroft, for money advanced the decedent various

times, \$87,736.43:

Mrs. Fanny B. Runk, the testator's mother, \$4,580;

Lena Giles, \$6,000; Miss Jennie Runk, the testator's sister. \$2,500:

Sundry small bills as per list annexed, \$3,438.50;

W. G. Hopper & Co., \$7,756.88; Kilbreath, Farr & Co., \$6,304.56;

Bickley, Lee & Johnson, \$2,504.19;

William Weightman, money loaned, \$20,000;

Total amount of debts, \$208,945.63.

A. Yes, that is correct.

Q. That of course did not include, as you say, Mrs. Barcroft, who was paid out of the insurance policies?

A. No, sir.

Q. Mrs. Barcroft's claim was for the amount of the shortage of Mr. Runk as treasurer of the city mission, was it?

A. Mrs. Barcroft paid the city mission in full. The estate paid all they could and she proved her whole claim against the estate;

Q. This claim as it is here standing in the name of Mrs. Mary A. Barcroft is really as assignee of the city mission, covering the amount he was short?

A. Yes, sir.

Q. How long a time antecedently to the death was the last date of your seeing Mr. Runk?

A. I think I saw him on or about the second of October, I think the Monday before his death.

Q. He shot himself what date?
A. He shot himself on the 5th, I think.

Q. Did you have any long talk with him on the 2d?

A. Only about five or ten minutes.

Q. Of course he did not explain any of these things to you 41 then?

A. He didn't say a word about that; no, sir.

Q. What was he discussing?

A. He simply came in the office and said he came in to say "How are you" to me, and shook hands and sat there a few minutes and got up and went away.

Q. Therefore your receipt of this letter was the first intimation

you had of the condition of his affairs?

A. The first intimation I had.

Q. He had theretofore stood very high in business circles?

A. Yes, sir; I had known him for a long while. I thought him to be perfectly solvent.

Q. And had no suspicion of his shortage or of his speculating in stocks even?

A. No, sir.

Q. Did you make any inquiry as to when this letter which you received was written? Did you ascertain that it was written the afternoon before he shot himself?

A. No. sir: I don't know when it was written.

Q. Was it dated, or did it have a date on it in any way?

A. I don't recollect anything about that. It is possible it may

have, but I don't remember it.

Q. I see two claims that were proved, one by his mother, Mrs. Runk, and the other by his sister, Miss Jennie Runk, one for \$4,580 and the other for \$2,500. Did you ascertain how those claims had arisen?

A. They were simply loans.

Q. I thought they were shares of stock that he had pledged?

A. No, I don't think so. Jennie Runk held notes of his aggregating that amount, and I recollect his mother had notes. have given stock for the notes in some shape, but that is my recollection of the claim.

Q. Was there any collateral of Mrs. Barcroft's which after his

death you took up?

A. No, sir; she took up her own collateral, if there was any in existence, and charged it against the insurance she had; that is, the

insurance money.

Q. Did you take up any of the city mission bonds or stock, which he had pledged for his private debt, and, if so, with what different institutions? Who took up the Pennsylvania Trust Company?

A. I did.

Q. What was that?

A. There was a note together with certain bonds of the P. W. & P. W. & B. 4's they were.

Q. She had his notes with the Pennsylvania Trust Company?

A. Yes, sir.

Q. For how much?

A. I think it was \$4,000; I don't recollect the exact amount. I think it was a new loan.

Q. Was it not \$5,100?

A. Was there that much in stock or was that the amount of the loan?

Q. That was the amount of the loan.

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A. Yes. Q. What stock was pledged to the city mission?

A. The P. W. & B. fours were with that.

Q. How much were they?

A. I think there were \$8,000 worth.

Q. So that after his death you found he had a private indebtedness in the shape of a note owing to the Pennsylvania Trust Company, of some \$5,100, and that there was pledged with that as collateral for his note some \$8,000 of the securities of the city mission?

A. Yes, sir.

Q. Those you took up and delivered to the city mission?

A. Yes, sir.

Q. Paying the money, of course, out of this insurance policy?

A. Yes, sir.

Q. Then as to the beneficial saving fund, what did you find was pledged there?

A. Refreshing my recollection, there were \$4,000 of Lehigh Navi

gation Company bonds there, and \$3,000 of Germantown Passenger railway bonds. I think that is all there were there.

Q. That is, for the Beneficial saving fund?

A. Yes, sir.

Q. And that was collateral security for his note?

A. I don't know positively that these are; \$8,000, Northern Central railroad. It is N. C. R. R., and I think we took some more. There were about \$17,000 paid the Beneficial saving fund, and I know the collateral exceeded it.

Q. Were not these loans that were taken up at the Beneficial saving fund pledged for Mr. Runk's own note; that is, the \$4,000 Lehigh Navigation loan and \$3,000 Germantown Passenger railway

bonds, and \$8,000 Northern Central?

A. Yes, sir.

Q. So that there were \$15,000 of other securities of city mission which had been pledged with the beneficial saving fund for his private debt?

A. Yes.

Q. That you took up after his death?

A. We took that up, yes.

Q. And turned over his securities to the city mission?

A. Yes, sir.

Q. Were there any other people or corporations who held obligations of Mr. Runk's for which any securities of the city missions from other people were pledged which you took up?

A. No, sir; I don't recollect anything else at all that I took up. Q. Those loans were renewals both with the trust company and

the Beneficial saving fund?

A. Yes, sir; they were most all demand loans and paid. In some instances they were made for thirty days. I think the Beneficial saving fund notes were thirty-day notes.

Q. And they had been carried for some time? A. Apparently renewals, yes, as far as I could say.

Q. And his financial affairs practically stood the same in October, 1891, as at the time of his death? You saw no substantial difference in his assets and liabilities?

A. I didn't make any examination as to how he stood in October,

1891. I simply examined it as it was at the time of his death. Q. You found that the great bulk of his indebtedness at the time

of his death had been owing for at least a year?

A. I don't know that I can say that, because I don't think the bulk of his indebtedness to the firm had been.

Q. Had he been speculating through the year?

A. Yes; he had been. He was in almost every stock. Q. The amount of indebtedness to Mrs. Barcroft had been running for several years?

A. Mrs. Barcroft's indebtedness was an old one; yes.

Q. And the bulk of the city mission indebtedness had been running for years?

A. I think some of it. These two notes were redeemed, whatever

time that was.

Q. And those pledged securities?

A. Yes, sir.

Re-examined

By Mr. BISPHAM:

Q. After you qualified as executor you took up, among the first things, the examination of Mr. Runk's account with the firm of Darlington, Runk & Co., did you not?

A. Yes, sir.

Q. You had several interviews with Mr. Darlington? A. Yes, sir.

Q. You looked at the books yourself, did you not?

A. Yes, sir.

Q. And you had the books of the firm examined by an expert employed by you in connection with the book-keeper of arlington, Runk & Co.?

A. Yes, sir.

44 Q. Is it not a fact that the books of Darlington, Runk & Co. showed that there was standing to Mr. Runk's credit as of October, 1892, over \$100,000?

A. Yes; that is the fact. The loss was made in the adjustment

of Mr. Runk's interest in the firm.

Q. At that time the overdrafts of which you speak had not been charged against Mr. Runk's account?

A. No, sir; they had not.

Q. They were subsequently charged up? A. Yes, sir.

Q. And is it not a fact that after charging those overdrafts there still remained a balance to the credit of Mr. Runk of about \$10,000?

A. Yes, sir.

By the COURT:

Q. At what time?

A. At the time of his death. The loss was made in the liquidation of his accounts with the firm.

By Mr. BISPHAM:

Q. So you do not mean to be understood as saying that Mr. Runk had drawn down the amount standing to his credit on the books and \$86,000 besides, do you?

A. No; I do not.

- Q. You mean to say that charging with \$86,000 or \$89,000, because the interest was added to those overdrafts, and charging that against the amount which stood to Mr. Runk's credit on the books of the firm, there was still left a balance in his favor of \$10,000? That is so?
 - A. Yes; that is so.

By the COURT:

Q. That is, at the time of his death the books showed a credit in his favor?

A. Yes, sir; it was in his favor.

Q. On the settlement of his account with the firm?

A. Yes, sir; the expert's account was rendered of his figures in the books to show that Mr. Runk was still a creditor of this firm.

Q. But on a settlement of the accounts was the balance at the

time of his death in his favor or against him?

A. It is very difficult to answer that question, because there were several things. If you mean a complete settlement with Mr. Darlington of everything, then undoubtedly Mr. Runk was a debtor of the firm—that is, taking his interest in the firm and liquidating it at a discount, and also because he was credited, you must understand, on the books of the firm with his proportionate share of this stock that was on hand, the dry goods on hand there. Of course, if they all had to be realized on we were obliged to sell them at a discount, so that is what makes the difference. He was a creditor on the books.

45 By Mr. BISPHAM:

Q. After you had examined the condition of Mr. Runk's account with the firm, you, under the advice of counsel and after consultation with counsel of some of the creditors, made a settlement with Mr. Darlington as surviving partner, did you not?

A. Yes, sir.

Q. And that settlement was reduced to writing?

A. Yes, sir.

Q. (Paper shown witness.) Is that it, the agreement of February 1, 1893?

A. Yes, that is it.

Q. This was one of the stipulations in the agreement: "That Joseph G. Darlington shall, in the settlement of the accounts of the late firm of Darlington, Runk & Co., take the entire stock of merchandize as the same is on hand on the first day of February, 1893, at the price of \$469,497, being the price of said stock as marked at retail, to wit, \$670,710, less deduction of thirty per cent., to wit, \$201,213, and the said Joseph G. Darlington agrees to be responsible for the said price under such date."

A. Yes, sir.

Q. Is it not the fact therefore that in that estimate of the value of the merchandise in connection with the firm of Darlington, Runk & Co., there was a shrinkage in the values, owing to the necessity of disposing of the entire stock of merchandise on hand?

(Objected to. Objection sustained.)

Q. State what the facts were in relation to the estimated value of the merchandise in regard to the value realized by a sale of it as an entirety to Mr. Darlington. Explain why it was.

A. It became necessary for us to settle Mr. Runk's interests in the

firm of Darlington, Runk & Co. at a figure on some basis which would represent a cash settlement with Mr. Darlington. As we had a very large stock of dry goods on hand, therefore our interest in it was very large, I think it approximated about \$300,000; Mr. Darlington and I agreed after some talk that he should take the stock on hand at thirty per cent. discount. Therefore Mr. Runk, as he was a creditor on the firm books to the extent of \$10,000, crediting him at the same time with his share of the goods that were on hand at their full figures they were then credited, immediately of course became a debtor, because thirty per cent. discount was a heavy one and his interest in the business was very large; therefore he became a debtor to the firm to the extent of about \$80,000. That is the only explanation I can make of exactly what took place in the settlement between Mr. Darlington and myself of Mr. Runk's interest in the firm, and that is the way he became a debtor o the firm.

Q. In making this settlement with Mr. Darlington did you take

occasion to make inquiries of other men in the business?

A. The settlement was made only after a very considerable correspondence with gentlemen who were thoroughly versed in the dry goods business. I wrote to Mr. Strawbridge about it, and I went to see Mr. Brown of Wood Romannia.

46 went to see Mr. Brown, of Wood, Brown & Co. In addition to that, I consulted with you, Mr. Bispham, with regard to the advisability of making the settlement, and it was only after I had seen them that the settlement was mand. We believed it to be the best that could be done for the estate.

Q. Coming to the account of the city mission, you have that book

before you, have you not?

A. Yes, sir.

Q. As I understand you, the city mission had some time prior to Mr. Runk's death been accommodated by the firm of Darlington, Runk & Co.?

A. Yes, sir.

Q. Is there anything on the books of the city mission to show at what time this misappropriation by Mr. Runk took place?

A. No, there is nothing on the books that I know of to show it. Q. I mean anything on the memorandum you found among Mr. Runk's papers which was put in the leaves of that book?

A. No, there is nothing there.

Q. Nor is there anything on the pages of the book to which the memorandum referred which showed them when this alleged miss-appropriation took place?

A. No, sir; nothing that I know of.

Q. The indebtedness of Mr. Runk to the city mission appeared

as of what date?

A. His indebtedness to the city mission was only ascertained after the expert had been over those books, and it was all made up to a certain time. Whatever the expert found to be missing he simply charged to Mr. Runk. There was no other way for us to arrive at a settlement.

Q. Did that investigation of the expert fix the time when that indebtedness arose?

A. No, sir, I think not. I haven't a copy of his report, but I don't think it did.

Q. Are you able to say from your recollection and from your examination of the entries in that book to which reference is made in the memorandum whether that indebtedness arose more than six months prior to Mr. Runk's death?

A. No, sir, I have no means of arriving at it from this book.

Q. Speaking about Darlington, Runk & Co., owing the city mission, it was the other way? The city mission loaned money to

Darlington, Runk & Co. ?

A. No, my recollection is that Mr. Perot told me it was an accommodation to the city mission. He wanted to get it invested and were very anxious to take it out, and Mr. Runk said they could use That was the reason I said "yes" when you asked me.

Q. Then when Darlington, Runk & Co. wanted to pay the city

mission off the money passed through Mr. Runk's hands?

A. Yes, sir.

By Mr. Johnson:

Q. And stopped there?

A. Yes, sir.

By Mr. BISPHAM:

Q. When it stopped there you do not know?

A. No, sir.

Q. You have been referred to the account which you filed in the orphans' court. In that account you included the amount of insurance moneys you had collected?

A. Yes, sir.

Q. You have also been asked in regard to a policy of insurance which you found among the papers to the benefit of Mrs. Runk? A. Yes, sir.

Q. Do you recall what was the amount of that policy?

A. \$5,000.

Q. And there was another one?

A. One of \$20,000 and one of \$5,000.

Q. There were two?

A. Yes, there were two, one of \$20,000 and one of \$5,000. The \$5,000 one has been paid, and the \$20,000 one had not.

Q. And the aggregate amount of the policies of insurance for the benefit of the estate was how much?

A. Unassigned, do you mean?

Q. Yes.A. I should say there were about \$150,000 or \$200,000.

Q. That is, not assigned as collateral?

A. Yes.

By the Court:

Q. And that have been paid?

A. We have already collected about \$150,000.

Q. Did you mean to say that was the aggregate of all the policies held by him?

A. No, sir; the aggregate amount of the policies held by the estate was about \$225,000, payable to the estate.

Q. And then \$25,000 that the wife had?

A. Yes, sir. Q. What else?

A. The balance was held by other people as collateral. I think there was about \$100,000.

Q. Besides?

A. Yes, sir.

Q. That would make how much?

A. About \$325,000 all together. Q. Including what the wife had?

A. Including what the wife had, I think that is right. We only collected \$150,000, and we have \$125,000 in suit.

By Mr. BISPHAM:

Q. Does the \$150,000 that you speak of as collateral include the policies which are outstanding as collateral?

A. No, sir; I didn't include those in that. They were not paid

to the estate.

Q. Then in the \$150,000 you do not include any amount which has been collected by the holders of the policies which have been assigned as collateral?

A. No, sir; I do not.

Q. You do not include the policies on Mr. Runk's life by his widow?

A. No, sir.

Q. Referring to the account, the amount which you said was paid by the insurance company foots up \$148,500, which is in ten different companies, is it not? A. Yes, sir.

Recross-examined.

By Mr. Johnson:

Q. Run your eye down this list of policies which I show you, footing up \$510,000, and see whether all those were not on Mr. Runk's life at the time of his death, though of course some of them were pledged with people?

A. Yes, I suppose that is right.

Q. So that he was carrying and joint creditors were interested at the time of his death in \$510,000 of life-insurance policies?

A. Including the widow's policy.

Q. That was \$20,000?

A. Yes, sir; \$25,000 was hers.

By the COURT:

Q. How do you account for the difference; you made it a while ago \$325,000?

A. I, as executor, was entitled to collect a certain amount of money from these companies and, as executor, I collected from them about \$150,000 up to the time of the filing of this account, but that is the only amount in which I am interested.

Q. I understood you to say that the policies which you received as executor of the will and the policies in the hands of others as collateral, together with the policies held by his wife, amounted to

about \$325,000.

A. No, sir. I am sorry I gave that impression.

Q. Then it was \$510,000? A. Yes; about \$500,000.

49 By Mr. Johnson:

Q. In order to separate this, which of this aggregate of \$490,000 was held as collateral by other people? I will call off the amounts of the policies that you collected, and ask you to name the policies which you are trying to collect, and the balance necessarily will be You collected from the New York Life \$50,000, from the Provident Life \$10,000, the Equitable Life \$15,000, the Northwestern Mutual \$5,000, the State Mutual Life \$10,000, the John Hancock \$20,000, the Berkshire \$20,000, the Ætna \$7,500, and from the Commercial Alliance \$1,000.

A. Yes, sir.

Q. That foots up \$128,500, which you collected, does it not?

A. Yes, sir, \$148,000.

Q. What was the amount in the Ætna?

A. That was \$15,000.

Q. Then you comprimised that for \$7,500?

A. Yes, sir.

Q. The Commercial Alliance was what? A. That was \$10,000.

- Q. That you settled for \$1,000? A. Yes, sir. Q. So that made \$148,000 of policies. What are you now suing on?
 - A. \$125,000, \$75,000 in the Mutual and \$15,000 in the Home.

Q. Then that is \$125,000, and the \$20,000 of the wife?

A. Yes, sir.

Q. How much did you collect?

A. \$148,000 I collected. Q. That makes \$293,000.

A. Yes, sir.

Q. Then the difference of the \$510,000 makes the pledged policies?

A. Yes, that is what it must have been.

Q. And that includes amongst others \$135,000 of Mrs. Barcroft's? A. Yes, sir. They were either pledged policies or policies that were not payable to me at all.

Q. Mr. Darlington is the gentleman who sits there (indicating)?

A. Yes, sir.

Q. He is represented here by his counsel, Mr. Dale, who specially represents him in this litigation?

A. Yes, sir.

Q. Your counsel, the counsel for the estate, are Mr. Bispham and Mr. Barnes?

A. Mr. Dale is also counsel of the estate.

Q. I thought he was Mr. Darlington's special counsel.

A. He - also retained for the estate. Q. After representing Mr. Darlington? A. Yes, sir.

Q. And Mr. Dale represented Mr. Darlington in all this settlement of this thing?

A. Yes, sir.

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Q. Mr. Darlington today claims out of this insurance money over \$69,000, does he not?

A. His claim against the estate is that amount.

Q. And yet you say that after charging against his account all these overdrawals of \$86,000 the books showed that instead of being a debtor for \$69,000 he was a reditor for \$14,000.

A. A creditor for about \$1

Q. So that by the method which that concern has been liquidated a credit of \$10,000 has been turned into a debt that is now sought to be recovered out of these insurances of \$69,000? Is that so ?

A. The credit has been turned into a debt, yes.

Q. There is no intimation by you that the interest of Mr. Runk was really worth that at which you liquidated it and left him a balance, is there?

A. I think if Mr. Runk had been alive maybe to make the settlement himself he certainly ought to have come out a creditor, yes.

Q. Mr. Darlington continued to carry on the business, did he not?

A. Yes, sir.

Q. And the original agreement provides that the settlement should be so made that the surviving man should get no advantage of the dead man's estate, does it not?

A. Yes. sir.

(Mr. Johnson offers in evidence said agreement.)

Q. I will offer this agreement in evidence and read it, and then ask you about it.

(Mr. Johnson reads the same as follows:)

"Memorandum of agreement made this 1st day of February, 1893, between Joseph G. Darlington of the one part, and A. Howard Ritter, executor under the will of William M. Runk, deceased, of the other part:

Whereas, Joseph G. Darlington and William M. Runk, late copartners, doing business under the firm name of Darlington, Runk & Co., under articles of ageeement bearing date July 31, 1886;

And whereas, in the eleventh article of said articles of copartner-

ship it is provided as follows:

In the event of the dissolution of the aforesaid copartnership by the death of either of the partners, the interest of the deceased part-

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ner in the firm shall terminate at the first stock-taking succeeding death, and the surviving partner shall wind up and settle the business as soon as possible, care being taken not to disarrange the same, and to be done in such a manner as will be most to the advantage of both partners, the estate of the deceased

partner not to suffer loss for the benefit of the surviving

partner.

And it is further agreed that all collections arising from the book debts of the firm of Darlington, Runk & Co. shall be accounted for by the surviving partner to the legal representative of the deceased partner quarterly."

That ends the quotation from the article.

"And whereas, William M. Runk died on the 5th day of October, 1892, and A. Howard Ritter is the executor under his will, acting under letters testamentary granted by the register of wills of Phila-

delphia county;

And whereas, the next stock-taking subsequent to the death of the said William M. Runk was on the 1st day of February, 1893, and by the terms of the articles of copartnership hereinbefore recited the interest of the said William M. Runk in the firm terminated at that date;

And whereas, the said Joseph G. Darlington proposes to continue the business of importing, jobbing and retail silks and general dry goods under the name of Joseph G. Darlington & Co., and it is necessary in order to facilitate the liquidation of the business of the late firm of Darlington, Runk & Co., that the value of the stock of goods on hand on February 1, 1893, should be determined and fixed;

And whereas, it has been agreed between the parties that the most equitable way of determining the present value of said stock of goods and fixtures for the purpose of liquidation will be to deduct from the retail price of said stock of goods as marked a deduction of thirty per cent., and from the fixture account, as the same appears on the ledgers of the late firm, a deduction of thirty-three and one-half per cent.;

Now, for the purpose of evidencing the premises, it is agreed be-

tween the parties hereto as follows:

1. That Joseph G. Darlington shall on the settlement of the account of the late firm of Darlington, Runk & Co. take the entire stock of merchandise as the same was on hand on the 1st day of February, 1893, at the price of \$469,497.55 being the price of said stock as marked at retail, to wit, \$670,710, less deduction of thirty per cent., to wit, \$201,213.23; and the said Joseph G. Darlington agrees to be responsible for said price as of such date.

2. That the said Joseph G. Darlington will in like manner take the fixtures of the late firm of Darlington, Runk & Co. in such liquidation at the price of \$34,578, being the amount of the fixture account as it appears on the ledger of the firm, to wit, \$51,868, less

one-third.

3. The said Joseph G. Darlington agrees that he will at all times indemnify and protect the estate of William M. Runk from all liability for all obligations of the firm of Darlington, Runk & Co.

4. Joseph G. Darlington shall continue to collect the outstanding accounts due or to become due to the late firm of Darlington, Runk & Co., for the benefit of the firm, and settlement shall be made of the account of the firm as between the said Joseph G. Dar-

52 lington and the estate of the said William M. Runk, on the basis of the amounts actually realized from the collection of the accounts payable and the sale of any goods or fixtures on the terms hereinabove provided, in accordance with the articles of copartnership.

Witness the signatures and seals of the parties hereto this first

day of February, 1893.

(Signed)

JOSEPH G. DARLINGTON.
A. HOWARD RITTER,
Executor of William M. Runk.

Q. Under that agreement the liquidation of his interest showed that he was short about \$70.000.

A. The liquidation of his estate, yes.

Q. Which you admitted in the audit before the court to the adjudicating judge to be correct?

A. Yes, sir.

By the COURT:

Q. That resulted from the depreciation or the deduction which you allowed on these goods in the settlement with Mr. Darlington? In other words, the outstanding indebtedness for those goods, in view of the depreciation you conceded left Mr. Runk indebted for that amount.

A. Yes, sir.

Q. That is the way it came about? A. That is correct exactly, yes, sir.

By Mr. Johnson:

Q. And Mr. Runk was right in his letter to you stating that the nominal capital of \$10,000 had been really depleted by surreptitious withdrawals by him to the tune of \$86,000?

A. His figures were right.

By the Court:

Q. That is, his figures in the letter to you?

A. They were about right; yes, sir.

By Mr. Johnson:

Q. On the face of the books he appeared to be a creditor for \$100,000?

A. Yes, sir.

Q. But by reason of not charging up amounts and in the way you have stated he was really but \$14,000 a creditor?

A. Yes, sir.

Q. And that \$14,000 depended on the assets realizing what they stood at on the books?

A. That is it exactly.

Q. And you settled with Mr. Darlington in a way by a deduction of thirty per cent. that brought him in debt the \$69,000 which Mr. Darlington is now claiming out of this insurance?

A. That is it; yes, sir.

53 By the Court:

Q. Mr. Runk's statement corresponded with the state of the account; that is, his statement in his letter and the written statement made to you corresponded with the state of the account of the firm?

A. Very closely; yes, sir.

Q. And the charge that subsequently took place which turned him into a debtor in a sum about equal to what he supposed himself to be indebted to the firm resulted from the deduction which you allowed in the settlement with Mr. Darlington?

A. That is right, exactly.

JOSEPH G. DARLINGTON, called for cross-examination, having been duly affirmed, was examined as follows:

By Mr. Johnson:

Q. There was a letter addressed to you by William M. Runk, written shortly before his death?

A. There was.

(At the request of Mr. Johnson the witness produces the letter referred to.)

Q. This is all in his handwriting?

A. It is.

(The letter referred to is read by Mr. Johnson, being as follows:)

"LLANDEILO.

MY DEAR JOSEPH: I have grossly deceived you and can only pay my debts by my life. The Girard bank is overdrawn \$20,000, F. & M. \$20,000, N. A. \$18,000, Tradesmen's \$16,000, Fourth Street \$6,000; \$86,000.

To make these accounts good you will find checks drawn and not sent in Arthur's hands in compartment in the safe, my top corner closet, in an envelope. These checks with balance in each bank have kept showing fair to good. Howard Ritter is my executor, and I have given him instructions to make these \$86,000 good from my first insurance payments.

The money on loans he is to pay also, and you may in Farr's small book charge to me. This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faith-

ful until two years ago. Forgive me. Don't publish this."

Q. What was the day of the week that he died?

A. Wednesday.

Q. What is the date of the letter? A. Tuesday.

By the COURT:

Q. When did you get it?

A. I am not clear when I received it.

54 Q. It came through the mail?

A. No; it didn't come by the mail, but I have been told that I received it the morning after Mr. Runk's death, and the party who told me it I have no right to doubt.

By Mr. Johnson:

Q. Do you know how it came into your possession? A. No; I don't know. I am not positive on that.

Q. Is your mind a blank as to how this letter got into your possession? There must have been a period of time when you opened this letter which brings back the getting of it into your hands?

A. I am not at all clear when I received that letter, whether I received it the night of Mr. Runk's death or the morning following his death, but from all I can learn I believe I received it the following morning.

Q. Where was it when you first saw it?

A. That I do not know. It was handed to me by some one, but I am not sure who handed it to me.

Q. It was handed to you by somebody either the night of his death or the following morning?

A. Yes, sir.

Q. You were at his house the night of his death?

A. I was.

Q. Did you get it when you were out there?

A. That I am not clear about.

- Q. Is this statement here that there were overdrawn accounts in the five different banks, each in a named amount, aggregating \$86,000, a correct statement?
 - A. That is not a correct statement. No bank was overdrawn.

Q. In what respect is it incorrect?

A. That none of the banks were overdrawn.

Q. What does this mean: "To make these accounts good you will

find checks drawn and not sent in Arthur's hands"?

A. That means that Mr. Runk drew money to pay A, B, C, & D on certain debts, and so far as Darlington, Runk & Co. were concerned those accounts were properly mailed and properly closed-A, B, C, & D's accounts.

Q. What do you mean by "so far as Darlington, Runk & Co. were concerned"?

A. I mean so far as Mr. Runk's connections or transactions with the firm the books of Darlington, Runk & Co. don't show anything. They are absolutely correct. This matter of \$86,000 does not appear on the books of Darlington, Runk & Co.

Q. How was there an overdrawing of his account?

A. Just as I have stated. He would draw accounts for these dif-

ferent parties, which accounts were drawn by Mr. Farr, who is now dead. Mr. Farr would draw those checks and close them so far as his books were concerned, and charge them to the various individual firms.

55 By the COURT:

Q. What became of the money?

A. Mr. Runk then would draw an equal amount of money in some form or shape to cover those checks. He drew certain checks for different amounts, and then he would draw one or two checks to cover that amount, and of course that would keep the books straight.

By Mr. Johnson:

Q. He did draw his checks, did he not?

A. He drew his checks.

Q. Suppose the checks drawn to those parties had been paid. would not the account have been overdrawn \$86,000?

A. If it had not been paid.

Q. If they had been paid would there not have been an overdraft of \$86,000?

A. If his account was good it wouldn't have been an overdraft;

it would have been charged against it.

Q. Had those checks which were drawn to the firm's creditors on the firm's bank been actually presented and paid, would not the firm's bank account have been overdrawn \$86,000?

A. They wouldn't have been paid if they had been overdrawn.

Q. Do you not know with your intelligence what the question is? If you do not, I will ask that the question be read to you.

(Question read.)

A. I cannot give any other answer.

Q. How much was the aggregate of these checks?

A. About \$86,000.

Q. As a business man, do you not think that by studying the question for some time you can tell me whether the result would not have been that if these \$86,000 of checks had been drawn out of the bank account it would have been overdrawn \$86,000?

A. No; I want to answer you, but I don't see how I can, because

the banks wouldn't have paid them.

Q. When did the firm of Darlington, Runk & Co. pay its loan of \$20,000 to city mission?

A. I should say within a very few months after we received the money.

Q. You received the money when? A. That I am sot clear about; about 1885 or 1886.

Q. So far back as 1885 or 1886 \$20,000 of notes of Darlington, Runk & Co. in favor of the city mission had been paid?

A. Yes, sir.

Q. And you were unaware until the death of Mr. Runk that the notes had never been taken up, were you not?

A. Yes, sir.

56 By the Court:

Q. That money he had drawn from the firm and applied to his

own use, had he?

A. So far as the firm knew we only had that money simply on deposit with us at the request of the city mission, and the money was paid right back within a few months, and I never knew anything more about it until after Mr. Runk's death. It don't appear on our books in any form.

By Mr. Johnson:

Q. There was a letter written to Mr. Ritter by Mr. Kunk which has been read here in your presence. I understood Mr. Ritter to say that he got that letter from you?

A. So he says, and I suppose he did.

Q. Did you open that letter addressed to him and cause a copy to be made?

A. No; I have no recollection about it. I don't know anything

about it.

Q. You can give us no explanation of the anomaly of that copy being forthcoming, then?

A. No; I know nothing about it.

Re-examined

By Mr. BISPHAM:

Q. Where did you get this letter which was subsequently handed by you to Mr. Ritter?

A. My impression is the package was given to me on the evening of Mr. Runk's death.

Q. Where?

A. At Mr. Runk's house?

Q. Do you remember by whom?

A. I think by Mrs. Runk. Whether that package was sealed or unsealed I am unable to say. My impression is it was unsealed.

Q. Do you recollect what you did with it?

A. I took it into the office next morning, and I think I handed it to Mr. Farr, but that is quite indistinct.

Q. The envelope may have been unsealed? A. My impression is it was unsealed.

By the Court:

Q. That it was unsealed when you handed it to him?

A. Yes, sir.

By Mr. BISPHAM:

Q. (Paper shown witness.) Look at this copy identified by Mr. Ritter and state whether you recognize the handwriting, and, if so, whose it is.

A It is in the handwriting of Mr. Farr.

57 By the Court:

Q. It has been stated by Mr. Ritter that Mr. Runk's statement that he had overdrawn his account \$80,000 odd was correct according to the state of the account at the time of his death, but that on a settlement of the accounts between himself and the firm at the time of his death it turned out that the firm was indebted to him in \$10.000?

A. That is correct.

Q. I do not understand how, if the firm owed him \$10,000, according to the account, he could have overdrawn his account \$80,000 odd?

A. Let me explain that. Mr. Runk, in this letter that was read, or, I think in my letter, states that those amounts will be found represented by checks, and that account was never allowed to go into our books. The settlement of that indebtedness to these various parties never again went into our book. It was settled entirely distinct.

By Mr. Johnson:

Q. How much did the articles of copartnership require Mr. Runk to have to his credit?

A. Never less than \$100,000.

By Mr. BISPHAM:

Q. (Indicating.) This is the balance under date of August 1, 1892, showing a credit to Mr. Runk's personal account of \$107.868.16?

A. Yes, that is correct; \$107,868.16 was Mr. Runk's credit on the 1st of August, 1892.

By the COURT:

Q. So the truth is then, as I understand it, according to the face of the book, that he had overdrawn his account \$80,000 odd, but according to a settlement made at the time of his death the firm was indebted to him in \$10,000?

A. No.

By Mr. Johnson:

Q. How do you remember that the letter to Mr. Ritter was unsealed, when you do not remember who handed you your letter?

A. I cannot explain that.

Mr. Johnson reads in evidence the deposition of Mrs. Mary A. Barcroft, on behalf of plaintiff, taken by agreement on mutual understanding as to time.

(Adjourned until Tuesday, April 2, 1895, at 10 o'clock a. m.)

U. S. C. C.-Butler, J.

A. Howard Ritter, Executor of the Estate of William M. Runk, Deceased.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

Tuesday, April 2, 1895.

Mr. Bispham, Mr. Dale, Mr. Barnes, Mr. Dickson, for plaintiff; Mr. Johnson and Mr. Sherman, for defendant.

WILLIAM H. NICE, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. Where are you employed?

A. With Joseph G. Darlington & Co.

Q. Were you at any time in the employ of Darlington & Runk? A. Yes, sir.

Q. For how long?

A. About seventeen years.

Q. Do you remember the late William M. Runk?

A. Yes, sir.

Q. Do you remember the day of his death?

A. Yes, sir.

Q. Where did he live at that time? A. St. David's, Delaware county.

Q. Did you go there about the time of his death?

A. After his death. Q. How long after?

A. Probably half an hour, I presume, to an hour.

Q. What took you out there?

A. I was requested to come out in the afternoon by Mr. Runk.

Q. Before he left?

A. Yes, sir. Q. What did he tell you to do?

A. He just asked me if I had anything to do that evening, and I told him "no." He asked me to come out to his place, and I went out.

Q. Did you tell him what train you would come out on?

A. No, sir; he told me to take the 7.15 train.

Q. Was that a usual thing for you to do, to go out in that way?

A. It was usual for me to go out there.

Q. When you got out there was he alive or dead?

A. He was apparently dead.

Q. Where was he?

A. Lying in his parlor.

59 Q. Did you know of any notes left by him addressed to anybody delivered after his death?

A. Yes, sir; one to Mr. Darlington and one to Mr. Thomas.

Q. Was there one addressed to you?

A. Yes, sir. 8 - 142

Q. Why did-you mention that?

A. I don't know why I didn't.

Q. Have you the letter that he addressed to you?

A. Yes, sir.

(At the request of Mr. Johnson the witness produces the letter referred to.)

Q. Did you see the body?

A. Yes, sir.

Q. What did you notice about it?

A. I noticed that he had a wound of some sort.

Q. Where was it?

A. In his right temple. Q. What day was that?

A. That was on Wednesday, October 5, I believe, as near as I can recollect.

Q. (Indicating.) This is the letter, is it?

A. Yes, sir.

The letter referred to is as follows:

LIONDEILO.

WILLIAM: Do all you can for Mrs. Runk, and see that I have a quiet funeral. I am driven to this, but I have tried to be a friend to you. Don't talk to any one.

Yours truly,

WILLIAM M. RUNK.

Tuesday, October 6, 1892.

Cross-examinded.

By Mr. BISPHAM:

Q. You saw Mr. Runk that morning, did you?

A. Yes, sir.

Q. Where? A. At the store.

A. At the store.
Q. Did you have any conversation with him?

A. I only received some few orders from him, that is all.

Q. Was there anybody present when you had the talk with him?

A. No, sir.

Q. Whereabouts in the store was it?

A. In his office on the second story.

Q. The conversation was a very short one, was it?

A. Yes, sir; just giving me necessary morning orders.
Q. Do you recollect what time of the day it was when you saw him in the morning?

A. It was about the usual time, about between eight or nine o'clock, or probably a little after nine.

Q. It was quite early in the morning?

A. Yes, sir; when he first came in the store.

Q. He used to come to the store early?

A. About that hour; yes.

Q. Do you happen to know whether Mr. Darlington had come to the store at that time?

A. No, sir; I didn't see Mr. Darlington. If he was there I didu't

know it.

Q. His habit of coming to the store was a little later, was it not?

A. A little later; yes.

Q. So Mr. Runk used to get there first?

A. Yes, sir.

- Q. And you had a talk with Mr. Runk shortly after he came to the store?
- A. I always went to Mr. Runk when he first came to the store to get whatever orders he wanted me to execute during the day.

Q. That is what you did on this morning?

A. Yes, sir.

Q. When you went out to St. David's you went out what time in the afternoon?

A. I went out on the 7.15 train.

Q. Where did you find the letter you got, of which you have spoken?

A. It was handed to me out there by Marshal Runk.

Q. Marshal Runk was Mr. Runk's son?

A. Yes, sir.

Q. Were any other letters handed you by Marshal Runk?

A. Not that evening.

Q. Were any letters handed to you at any subsequent time by Marshal Runk?

A. The next morning.

Q. What letters did he give you then?

A. He gave me two letters. Q. Addressed to whom?

- A. One to Joseph G. Darlington and one to George C. Thomas.
- Q. Was the envelope containing the letter to Mr. Darlington open or not?

A. No, sir; they were closed.

Q. What did you do with the letter to Mr. Darlington?

- A. He gave it to me just before the train was ready to start, and he told me to deliver one to Mr. Darlington and the other to George C. Thomas.
- 61 Q. What sort of an envelope was it that the letter addressed to Mr. Darlington was enclosed in? Was it a long envelope or a short envelope?

A. It was a short envelope.

Q. You delivered that to Mr. Darlington?

A. I did; yes, sir.

Q. At the store, I suppose?

A. Yes, sir.

Q. And you took the other letter to Mr. Thomas?

A. No. sir.

Q. What did you do with the other letter?

A. I gave it to Mr. Darlington.

(Mr. Johnson offers in evidence on behalf of plaintiff the orphans' court record of the settlement of the account of A. Howard Ritter, executor.)

George T. Fallon, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. You were the coroner who held the inquest on the late William M. Runk, were you not?

A. I was.

Q. Of what county? A. Delaware county.

Q. About what hour did you first see the body, and state whether you examined into the cause of his death and what you found it to be.

A. I first saw the body at eight o'clock in the evening of Octo-

Q. Was it Tuesday or Wednesday?
A. Thursday, October 6, at eight o'clock p. m. I examined the body in the presence of the jury, and found a bullet wound over the right temple on the right.

Q. Which temple was it? A. The right temple.

Q. Did you examine to see whether that had been done by somebody else or by Mr. Runk?

A. There were no marks of powder whatsoever. There was only

one wound.

Q. Was there any evidence of any violence from anybody else?

A. Seemingly not.

Q. The inquest was held at that time?

A. Yes, sir.

Q. And the verdict of how he died was what?

A. Temporary aberration of the mind.

Q. The inquest was that he had shot himself?

A. Yes, sir.

62 By the Court:

Q. That is the way they expressed it?

A. That is the way they expressed it.

By Mr. Johnson:

Q. Had you known him before?

- A. Not intimately. Just simply a passing acquaintance, that is all.
- Q. Do you remember what witnesses were examined by your inquest?

A. William H. Nice, Patrick McCuen, John Moore, Arthur Runk, Dr. Islip and Joseph G. Darlington. I think that is all.

Cross-examined.

By Mr. BISPHAM:

Q. I thought you said the finding of the jury was that Mr. Runk had killed himself while under temporary aberration of the mind?

A. That is my recollection. I have it here.

Q. Turn to your record of the finding and read the exact language.

(The witness reads same.)

Q. Does not the whole sentence read this way, after reciting the holding of the inquest: "Do on their solemn oaths and affirmations respectively say that it appears from the evidence before us that his death was caused by a gunshot wound inflicted by himself while suffering under a temporary aberration of the mind"?

A. "That the deceased came to his death from a gunshot wound."

That is right.

Q. Inflicted by himself while suffering under a temporary aberration of the mind?

A. That is correct.

Re-examined.

By Mr. Johnson:

Q. That was found on the testimony produced before them? A. Yes, sir.

(The witness produces on the call of Mr. Johnson the testimony referred to.)

Q. You have given copies of this, have you not?

A. Yes, sir.

(Mr. Johnson offers in evidence on behalf of plaintiff the testimony taken before the coroner's jury on the occasion in question.) Objected to. Objection sustained.

RALPH F. CULLANAN, having been duly sworn, in answer to Mr. Bispham, Mr. Johnson states:

Mr. Johnson: I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the city mission in his hands as treasurer.

(Objected to on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's

own life.)

The COURT: This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time, but the court will have to hear it and reserve for after considera- what weight it should have, or whether it should have any. We may be asked to rule it out, and, if so, we will consider it.

(Exception by plaintiff.)

By Mr. Johnson:

Q. You are president of the Beneficial Saving Fund Society at Twelfth and Chestnut streets?

A. Yes, sir.

Q. After the death of William M. Runk were there any securities taken up by his executor?

A. Yes, sir.
Q. What were those securities, and when were they first pledged? A. (Referring to paper.) There were \$8,000 of Northern Central consolidated general mortgage sixes received by the executor on the 19th of November, 1892.

There were \$10,000 of Baltimore & Ohio Railroad six percents received on November 11, 1892, for which we had the receipt of Mr. Tener, who signed as for Mrs. Barcroft, and the executor of William

M. Runk's estate.

Then there were \$8,000 of Germantown Passenger Railway five per cent. bonds, and \$4,000 of Lehigh Coal & Navigation Company gold six per cent. bonds that were received on the 19th of November, 1892, by Mr. Ritter as executor.

Q. On the 19th of November, 1892, there were \$8,000 of Northern Central bonds, \$8,000 of Germantown Passenger Railway bonds and

\$4,000 of Lehigh Navigation bonds received by Mr. Ritter?

A. Yes, sir.

Q. When did those bonds come into the possession of your company, originally, and as a pledge for what? Take the \$4,000 of Lehigh Navigation bonds.

A. They came into our possession on the 29th of April, 1891, the \$4,000 Lehigh Navigation and the \$3,000 Germantown Passenger Railway fives, for a loan of \$6,800.

Q. Whose loan was that?

A. It was a loan to William M. Runk.

Q. How about the \$8,000 of Northern Central bonds?

A. The \$8,000 of Northern Central came into our possession on April 14, 1886. There were originally \$9,000 of those, and it was for a loan of \$9,000. \$1,000 of them matured on January 10, 1891, and were collected by us, and the amount credited on account of the loan at Mr. Runk's request.

Q. Whose note was that always? A. William M. Runk's?

Q. They were there as early as 1886?

A. Yes, sir.

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Cross-examined.

By Mr. BISPHAM:

Q. Do I understand that these were coupon bonds?

A. Yes, sir; all coupon bonds.

Q. There was no evidence of ownership?

A. There was no evidence of ownership, as I remember now, I don't recall any.

Q. And the note was Mr. Runk's note?

A. Yes, sir.

Mr. Johnson reads in evidence the following letter:

RUNK'S ESTATE 218. INS. Co.

PENNSYLVANIA R. R. Co., TREASURER'S DEPARTMENT, March 29, 1895.

John Scott, Jr.

DEAR SIR: Replying to your inquiries, I would say that all the issues of \$134,000 of Steubenville & Indiana Railroad Company seven per cent. bonds falling due January 1, 1890, have been redeemed, and all but \$1,000 prior to March 1, 1890, the remaining \$1,000 being paid in October, 1891.

These bonds were commonly known as Steubenville & Indiana bonds, but appear in our books as bonds of the Pittsburg, Cincinnati & St. Louis Railway Company, Steubenville & Indiana Railway

Company, Columbus & Newark division.

These bonds were largely collected through banks and trust companies and it is thus impossible to say from what individuals they were redeemed. Neither our books nor our checks show any payment on this account to William M. Runk, either individually or as treasurer of the Protestant Episcopal city mission.

This is all the information our books can give, and I trust this will be accepted as the full extent of the testimony we can give you.

Yours truly, ROBERT W. SMITH, Treasurer.

SAMUEL WOODWARD, having been duly affirmed, was examined as follows:

By Mr. Johnson:

Q. You are assistant treasurer of the Philadelphia Saving Fund? A. Yes, sir. 65

Q. There was a subpæna to bring the books which showed the transactions between William M. Runk and your fund?

A. Yes, sir.

Q. Can you tell us what bonds or securities he had pledged there as collateral for his individual loans?

A. I can; yes.

Q. Let me first call your attention to an individual transaction. Tell us if at any time he pledged \$10,000 of Steubenville & Indiana bonds, and, if so, give the first date they were pledged with you?

A. (Referring to book.) October 1, 1885, \$10,000 Steubenville & Indiana Railroad Company seven per cent. bonds.

Q. As security for what were they pledged?

A. For a loan of \$10,000 to William M. Runk individually.

Q. How long did those Steubenville bonds continue to remain pledged with you?

A. From 1885 to 1887.

Q. Always as security for notes of William M. Runk?

A. Yes, sir.

Q. Was there any pledge of \$12,000 of Norfolk & Western bonds?

A. Yes, sir.

Q. When first?

A. August 29, 1891, as security for a loan of \$10,800 to William M. Runk on his note.

Q. What other bonds or securities were pledged as collateral for

those loans?

A. \$10,000 of Camden & Atlantic and \$1,000 Cincinnati City seven and three-tenths, pledged April 10, 1890, as security for a note of William M. Runk's for \$11,000.

Q. They were taken away when?

A. November 8, 1891. \$5,000 of those were taken away November 8, 1891, and the residue November 11, 1892, by H. B. Tener.

Q. But I mean the Camden Atlantic bonds were taken away by

Mr. Ritter, executor.

A. No; Mr. Ritter only took away \$1,000 of Cincinnati seven and three-tenths.

Q. Tener took the \$5,000 of Camden & Atlantic?

A. Yes, sir.

Q. Was there any loan you had with Runk?

A. Yes, sir; April 11, 1889, there was a note of Runk's for \$15,000.

Q. On which was pledged what?

A. \$10,000 Camden & Atlantic, \$3,000 Germantown Passenger Railway fives, \$1,000 Cincinnati seven and three-tenths, and \$1,000 Pennsylvania Railroad six per cent. loans. That was paid off April 11, 1890.

Q. Is there any other loan?

A. No other loan.

66 Cross-examined.

By Mr. BISPHAM:

Q. What securities were held by the society on the 1st of November, 1891, as collateral for Mr. Runk's note?

A. We had on that day, November 1, 1891, two loans of Runk's, one for \$11,000 and one for \$10,800.

Q. What collateral did you have?

A. For the \$11,000 we had \$10,000 Camden & Atlantic sixes and \$1,000 Cincinnati City seven and three-tenths. For the loan of \$10,800 we had \$12,000 Norfolk & Western sixes.

Q. Were those loans taken up prior to Mr. Runk's death, or any

part of them, the date of his death being October 5, 1892?

A. Yes, sir; \$5,000 were taken up November 9, 1891. Q. The rest were not taken up until after his death?

A. Not until subsequently, after his death.

WILLIAM G. SHERTEL, having been duly affirmed, was examined as follows:

By Mr. Johnson:

Q. You are one of the officials of the Farmers' & Mechanics' bank?

A. Yes, sir; in the transfer department.

Q. They are the agents for the transfer of city loans?

A. Yes, sir.
Q. Turn to your book and see if there was any city loan paid to William M. Runk, treasurer of city missions, and, if so, when?

A. January 31, 1890, \$1,100.

Q. That was in two certificates? A. Two certificates, \$700 of six per cent. untaxed and \$400 six per cent. taxed.

Q. And it stood in what name?

A. The Philadelphia Protestant Episcopal City Mission for House of Mercy.

Q. And it was taken up by Mr. Runk on that date?

A. William M. Runk as treasurer.

(Cross-examination waived.)

WILLIAM G. HOPPER, having been duly affirmed, in answer to Mr. Bispham, Mr. Johnson states:

Mr. Johnson: I propose to prove that this witness is a creditor of the estate to the amount of \$7,756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely.

(Objected to. Objection overruled.)

67 By Mr. Johnson:

Q. You are a member of the stock-broking firm of William G. Hopper & Co.?

A. Iam.

Q. Did you have transactions for a period of two or three years antecedently to the death of William M. Runk, with him?

A. We did, yes, sir.

Q. Can you tell the magnitude of those transactions for two or

three years immediately antecedent to October, 1891?

A. To the best of my recollection he would buy and sell stocks, probably from 100 to 300 shares, several days in succession, and then there might be a lapse of a day or two. He was in the market day after day, off and on, to a very limited extent; that is, to the extent some days of 200 or 300 shares, possibly 500 shares. He would go in and buy in the morning, probably, and close his stock transactions in the afternoon.

Q. That 500-share transaction might involve a purchase of \$40,000, might it not?

A. It would depend on the price of the stock, yes.

Q. That was the extent of your transactions in a limited way?

A. To the best of my knowledge and belief.

Q. Do you know whether by October, 1891, he had lost or gained? A. He was both making and losing; but the average, I should think was a loss, to the best of my knowledge.

Q. Did he pledge any securities at any time to cover those trans-

actions, or were they merely cash margin?

A. They were cash margins with the exception of thirty shares of Pennsylvania Railroad stock, which was deposited some time during that period.

Q. That stood in the name of his mother, did it not?

A. In the name of his mother or sister, I have forgotten which. It wasn't in his own.

Q. The other things were cash margins the put up?

A. Cash margins to the best of my knowledge and belief.

Q. Then I suppose you would settle up those accounts of selling and buying from time to time, and if there was a balance against him he would pay it?

A. Yes, sir; he would deposit something on account of it. Our

custom is to make monthly accounts.

Q. At the time of his death he was indebted to your firm on these speculative transactions, and you proved as creditors to the amount of \$7,756.88?

A. He was.

Q. That was all in his speculative purchases, was it not?

A. That was all.

Q. And that indebtedness covered what period? Up to when had he settled, antecedently to his death?

A. He-made no settlement. It was an open account. I have a copy here dating back to 1891, and then I have my book there showing prior to that. That was the copy that was in the orphans' court. That will give you the average of the operations, I think. That is a copy of the ledger.

Q. Here is your account of your dealings with William R. Runk from July 1, 1891, down to the time of his death, and liquidations

afterwards. (Paper shown witness.)

A. Yes, sir.

Q. And that shows the amount of the dealings with him in stocks?

A. It does.

Q. Was a single one of all these shares representing those dealings ever delivered to him?

A. Not to my knowledge.

Q. The account was made up, the difference was ascertained, and he was asked to pay that difference?

A. Yes, sir.

Q. I see here that balance on the account is \$1,189, but that there was a note given on the 1st of September, 1892, for \$6,099.15, which with interest to the time of the orphans' court adjudication, \$433, made an addition of \$6,532 that he was owing you?

A. Yes, sir.

Q. And that note given you on the 1st of September, 1892, and unpaid at his death, covered an additional amount of loss up to that time?

A. That was the result of the account, the closing up of his account with us, for the period of time he traded in stock.

(Mr. Johnson offered in evidence on behalf of defendant the account referred to, which will be found annexed to the testimony following page —.)

Cross-examined.

By Mr. BISPHAM:

Q. Are you able to tell how much, if anything, Mr. Runk owed, say on the 1st of November, 1891?

A. I can't recall the amount, no, sir.

Q. Can you approximate it?

A. I don't keep the books, and I am not conversant just as to the

exact figures.

Q. On October 31st, there was a balance of \$18,000. Is it not a fact that the stock which you were buying for Mr. Runk was held as collateral?

A. It was. We took and paid for the stock that he bought, and held it against his account, and we advanced the money. He paid us something on account, and we carried the stock for him. If he had presented his check for the amount of the stock we were carrying we would have had it in stock, a hundred St. Paul, or 500 St.

Paul, or 300 or 500 Reading.

Q. You always required him to keep up a margin as nearly as possible?

A. We did. That is the custom.

Q. Is it not a fact that in October, 1892, when this balance appears to be something like \$5,800, you held blocks of stock as collateral; say September 30, 1892?

A. I presume we did.

Q. Don't that account show?

A. We were carrying according to this account several hundred Lehigh Valley and a hundred Pacific preferred.

By the Court:

Q. Did you have the certificates of that stock?

A. We had.

Q. In his name?

A. No, sir; in our name, because we advanced money on them. They didn't belong to him until he paid for them.

By Mr. BISPHAM:

Q. For this debt of over \$6,000 proved against the estate you held collateral, did you not?

A. We did.

Q. You were not simply an unsecured creditor of the estate, were you?

A. I oughtn't to say that we held collateral. After we had disposed of his collateral which we held he owed as \$6,000 and some odd, whatever the amount was, I have forgotten the exact figures.

Q. That was after disposing of the collateral?

A. That was the debit, yes. That is what he owed us.

Q. The collateral was sold out?

A. The collateral was sold out by order of the executor.

Q. Because the margin was not kept up?

A. Yes, sir.

Q. So the transaction turned out to be a loss?

A. A loss to the extent of over \$7,000.

Q. You spoke about Mr. Runk putting up some shares of Pennsylvania railroad which stood in the name of his mother, I believe?

A. His mother or sister, I have forgotten which.

Q. Of course that certificate had on its back or attached to it a power of attorney to transfer signed by the mother or sister?

Q. You did not suppose that Mr. Runk was using other people's securities or you were taking other people's securities, did you?

A. We did not,

Re-examined.

By Mr. Johnson:

Q. You supposed the thirty shares of his mother or sister were in this stock-gambling pool, did you not? 70

A. The thirty shares of Pennsylvania Railroad stock he left I think at the time with the expectation of selling it.

Q. But what became of it; was it sent to cover his losses?

A. We sold it by order of the executor. We had it on the account at the time of his death.

T. H. Powers Farr, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. Are you a member of the firm Kilbreath, Farr & Co.?

A. That was the name of our firm at the time we had our transactions with Mr. Runk.

Q. That is a firm of stock brokers in New York?

A. Yes, sir.

Q. Turn to your account with William M. Runk and tell us what the magnitude of it was. It was a stock-speculating account?

A. A stock-trading account, yes. It wasn't a very large account. I think he bought about 1,500 shares a month on an average. ferring to book.) The account was opened February 2, 1891.

Q. The transactions during that month, which was a short month,

were \$148,000, were they not?

A. Yes, sir.

Q. The next month the transactions amounted to \$134,000? A. Yes, sir.

Q. The next month they amounted to about \$90,000 odd?

A. Yes, sir.

Q. The next month they amounted to \$124,000? A. Yes, sir.

Q. And the next month, June, to about \$39,000?

A. Yes, sir.

Q. That was one side of the account?

A. Yes, sir.

Q. Then on the other side of the account the transactions were equally great?

A. Yes, sir; he bought and sold about the same amount.

Q. In that aggregate of about \$560,000 of stock bought and sold, how much was delivered?

A. None.

Q. I think you are creditors of this estate for the amount of \$6,304 on this trifling account, are you not?

A. Yes, sir. Q. You will get out of this insurance money something, if it is recovered?

A. Part of it has been paid.

Q. When he died the balance was bigger than that?

A. That is only the first few months. Q. In July the transations were \$34,000?

A. Yes, sir. Q. In August they were only about \$49,000?

A. Yes, sir.

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Q. And in September only about \$65,000?

A. Yes, sir.

Q. In October of that year they were \$25,000, in November about \$8,000, in December of that year about \$80,000?

A. Yes, sir.

Q. In January, 1892, the transactions were about \$45,000?

A. Yes, sir. Q. In February, 1892, they were \$58,000, in March, 1892, about \$68,000, and in April, 1892, they were about \$28,000?

A. Yes, sir.

Q. In May you were liquidating?

A. Yes, sir. Q. Then in May, 1892, they were \$60,000, in June, 1892, they were \$44,000?

A. Yes, sir.

Y. And the residue of the time ahout \$42,000?

A. Yes, sir.

Q. It ended in a balance of how much?

A. He owed us \$9,000, and then we had \$3,000 in Camden and Atlantic bonds, which we sold.

Q. That is the balance that you proved against the estate?

A. \$6,421.

Q. Those transactions were on margin, of course?

A. Yes, sir.

Q. He had put up cash margin, and then when that would go he would put up more?

A. Yes, sir.

Q. So that when he died it was all gone, and there was something left to come from the estate?

A. Yes, sir.

Cross-examined.

By Mr. BISPHAM:

Q. You were always careful, I suppose, to have Mr. Runk keep

up his margin, were you not?

A. Yes, sir; I used to see Mr. Runk personally and receive assurances about his financial condition from time to time, and had no uneasiness whatever about being able to collect any amount due us at any moment.

Q. I am speaking about the cash margin that was deposited and

the stock you held and bought for resale?

A. Yes, whenever we allowed it to run behind we had a note or assurances that we could receive the money when we required it. Q. You speak of running behind. The purchases were

large, but the sales were correspondingly large, were they 72 not?

A. Yes, sir.

Q. So that the difference would be a comparatively small amount?

A. Yes, sir.

Q. And for that you had margin?

A. Yes, sir.

Re-examined.

By Mr. Johnson:

Q. Do you know whether that \$3,000 of Camden and Atlantic bonds went to Mrs. Barcroft's attorney, Mr. Tener?

A. I think they were taken by the estate. I don't know to whom

they were paid.

Q. Did you ever have to call on Mr. Runk for margin more than once?

A. Yes, sir.Q. You would press him, of course?A. Not very much.

Q. Enough to get the money?

A. No, not always.

Q. You do not know whether any of this cash which you got was the cash that was drawn from Darlington, Runk & Co.?

A. No, I do not.

WILLIAM L. Brown, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. You are assistant treasurer of the Pennsylvania Company for Insurance on Lives and Granting Annuities?

Q. You were subpænaed here to brink your books showing your dealings with Mr. Runk for a certain period?

A. Yes, sir.

Q. Was there any loan made by the company to Mr. Runk, and, if so, when and on what security?

A. On May 31, 1889, Mr. Runk got a loan on his own personal

note.

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Q. How much was his note for?

A. \$3,600.

Q. Then there was an additional amount?

A. There was a subsequent loan of \$1,500 July 9, 1889.

- Q. What collateral was there? A. \$6,000 Philadelphia, Wilmington & Baltimore four per cent. stock trust certificates.
 - Q. In whose name did those stock trust certificates stand?

A. I have forgotten the name. Q. In the Episcopal city mission?

A. Yes, the Episcopal city mission. Q. Who paid that loan off? A. The executor, Mr. Ritter.

Q. After death? A. Yes, sir.

(Cross-examination waived.)

HORACE H. LEE, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You are or were a member of the firm of Bickley, Lee & Johnson?

A. Yes, sir.

Q. They were stock brokers?

A. Yes, sir.

Q. And they claim against this estate the amount of \$2,504.19? A. Yes, sir.
Q. Is that a balance due on speculative stock transactions?

A. Yes, sir. Q. State the nature of those transactions.

A. I only looked after this end. He simply placed margins here and I only have the books here in which we credited them to New York. I can't give you the cash that was transmitted. He commenced his transactions with us the 1st of February, 1891.

Q. He did business altogether on margin?

- Q. No stocks were actually delivered to him? A. Not to him, but they were of course paid for.
- Q. He never got one of these shares that he bought or sold?

A. Not with us; no, sir.

Q. How large or small were those transactions?

A. Sometimes he would buy a thousand shares a day, and sometimes nothing.

Q. About how much cash went all in one direction from him to New York as margins or settlements? The first year, ending in 1891, how much was he to the bad?

A. I suppose he was out about \$10,000 the first year.

Q. And the second year, of course, he made it all up, or did he come out worse?

A. Worse.

Q. And the transactions were small, but they reached the magnitude of a thousand shares a day?

A. Sometimes they were a little heavier than that.

Q. So that in one day, if the stock was perhaps selling for \$50 a share, 1,000 shares would be a \$50,000 transaction?

A. Yes. 74 Q. Did l

Q. Did he settle up the balances monthly?

A. No, sir; we made him settle up whenever he owed us any money.

Q. You did not give him any credit? Did you ever have to call

twice on him for money?

A. No, sir; we always asked him and he always responded. We wouldn't have had any business with him if he didn't.

Q. The only condition on which he could continue this privilege of losing money would be by paying up the cash as he went?

A. Yes, or any one else.

(Cross-examination waived.)

RUSSELL E. TUCKER, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. With what stock-broking firm are you connected?

A. R. E. Tucker & Co., Philadelphia.

Q. Did you have any speculative stock transactions with Mr. Runk?

A. Yes, sir.

Q. Have you your book there? A. Yes, sir. -They were small.

Q. In the month of January, 1891, those little transactions amounted to \$116,000, did they not?

A. Yes, sir.

Q. And in the months of February and March they amounted to \$69,000, did they not?

A. Yes, sir.

Q. In the month of April they amounted to \$47,000?

A. April and May.

Q. In June they had gotten down to but \$25,000?

A. Yes, sir.

Q. And in August and September they got down to \$4,000, during the year 1892?

A. Yes, sir.

Q. How many shares of stock did you ever deliver to him?

A. We never delivered any.

Q. You dealt on margin, I take it?

A. Yes, sir.

Q. At the time of his death he owed you nothing? A. No.

Cross-examined.

By Mr. BISPHAM:

Q. You kept his margin up?

A. Yes, sir.

Q. And although the transactions were large on each side 75 of the account the difference was small?

A. The difference was small, yes.

Q. Mr. Johnson has asked you about these stock transactions and spoken of their size. Are those unusually large transactions?

A. No. One month there might have been large, amounted to

\$135,000. The others were not.

Q. A good many people are speculating to the same extent, I suppose?

A. Yes, sir. It depends on the price of the stock whether the

transactions are large or not, according to the totals.

Q. What was it that made you say the transactions were large? A. There was a total of \$135,000 bought, but the balance at the end of that month was \$7,200. The difference was only \$7,200.

Q. What year was that?

A. That was in January, 1892.

Re-examined.

By Mr. Johnson:

Q. I suppose these would be pretty large transactions though for a man in the position of using trust certificates? You mean it would not be a large transaction for a millionaire?

A. Of course, I didn't know anything about that.

By Mr. BISPHAM:

Q. You would not have any transactions at all if you know the person was using trust funds?

A. No.

By Mr. Johnson:

Q. If he told you his true condition you would not have dealt with him?

A. No.

Charles D. Barney, having been duly affirmed, was examined as follows:

By Mr. Johnson:

Q. Your firm was the Philadelphia office of Kilbreath, Farr & Co. in 1892, was it not?

A. Yes, sir.

Q. Do you remember some \$3,000 of bonds they held that were taken up by the executor of Mr. Runk?

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A. Yes, that is my recollection of it.

Q. The bonds of what company were those?

A. I never looked that up. I cannot say what kind of bonds they were, nor whom they were delivered to.

Q. You do not know who got them?

A. No, sir.

(Cross-examination waived.)

Mr. Johnson asks for the dates and amounts of the policies taken out subsequent to October, 1891, which is furnished by plaintiff's counsel, as follows:

\$50,000 in the Home Life Insurance Company, January 16, 1892,

annual premium \$1,900.

Mutual Life Insurance Company of New York, four policies, as

follows:

\$40,000, annual premium, \$1,536; \$20,000, annual premium, \$782; \$15,000, annual premium, \$586.50; \$20,000 for the benefit of the wife.

Effingham Perot, having been duly affirmed, was examined as follows:

By Mr. Johnson:

Q. You are the present treasurer of the Philadelphia city mission?

A. Yes, sir.

Q. Have you there the books you received from the executor of Mr. Runk after his death?

A. Yes, sir.

Q. This black book which we have used, marked "ledger," was one of those books, was it?

A. Yes, sir.

Q. And this black book marked "cash book" was one?

A. Yes, sir.Q. What else was there?A. This is the check book.

Q. You have a settlement made after his death with Mrs. Barcroft?

A. Yes, sir. (Producing same.)

Q. How much in round numbers in securities and cash was he

short on the settlement, \$86,000?

A. I have no knowledge of that. I turned over all the securities. Where they came from I never had any knowledge. I never was brought in contact with anybody except Mr. Ritter.

Q. This is the settlement that was made with Mr. Ritter, is it

not?

A. No; that was made with Mrs. Barcroft in Mr. Bullitt's office. I have no personal knowledge of any shortage whatever. The securities were turned over to me, and I have no further knowledge.

Q. There was a lot of cash turned over to you, was there not?

A. Yes, sir.

Q. And it was turned over through a settlement made with Mrs. Barcroft ?

A. No, sir; I received from Mr. Ritter securities and money. Q. Did you not ascertain that some of the securities were intact,

and you got them, and some there was a settlement for?

A. There were some securities that were turned over immediately, and there were some that there was a delay of a few days.

A. Yes.

Mr. Johnson offers in evidence on behalf of defendant the 77 settlement referred to.

Cross-examined.

By Mr. BISPHAM:

Q. In whose handwriting are the entries of this little black book? A. I really don't know. They are not in Mr. Runk's handwrit-They are in somebody's handwriting who kept the books for ing. him.

By the Court:

Q. Does the book contain his transactions?

A. Yes, sir; I think so.

By Mr. BISPHAM:

Q. Do you know whether any entries were made in this book after Mr. Runk's death, or whether the book was carried down after

A. No, sir, not by me, nor do I know of any.

Q. Turn to page 130 of that book, and see if you find there a loan account for \$10,000?

A. Yes, sir.

Q. Under what date?

A. 1889, balance brought forward from page 110. The date on page 110 is March, 1889.

Q. What is your position in the city mission?

A. I am treasurer.

Q. How long have you been treasurer?

A. About a month after Mr. Runk's death I was appointed.

Q. From your examination of the books of the city mission are you able to say whether interest was paid on that loan of \$10,000?

A. Yes, I think it was. Q. Up to what date?

A. June, 1892.

Q. Was it paid every six months?

A. It appears to have been paid every three months.

Q. The interest was paid up to within three months of Mr. Runk's death?

A. Yes, sir.

Q. You find on page 108 another loan of \$10,000, do you not? A. Yes, sir. I take it that it is the same loan.

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Q. There are two loans, apparently, of \$10,000, one on page 130 and one on page 110.

A. That is brought forward in this book.

Q. That is brought forward from page 108 to page 130?

A. Yes, page 130 is the balance brought forward from page 110. The other is 108.

Q. On page 108 you found that other loan?

A. Yes, sir.

Q. What is the date of that?

A. That refers back.

Q. What is the original date?

A. That appears to have been brought forward from original loans made in 1882. The account has gone through a good many changes in that time, and the balances are brought forward.

Q. Does it show to whom the loan was made? A. It was D., R. & Co., the original entry.

Q. That is, Darlington, Runk & Co., I presume?

A. Yes, I presume so.

Q. Was the interest paid on that? A. Yes, it appears to have been paid.

Q. Up to what date?

A. I should think that was July, 1892. It is a little difficult to see the figures. It is either January, 1892, or July, 1892.

Mr. Johnson offers in evidence on behalf of defendant the black book marked "Ledger," referred to.

Mr. Johnson also offers in evidence on behalf of defendant the following agreement:

Know all men by these presents, that

Whereas, William M. Runk, late treasurer of the Protestant Episcopal city mission, at the time of his death, on October 4, 1892, had in his possession as treasurer of the said Philadelphia Protestant Episcopal city mission the sum of \$24,063.85 in cash and the following securities:

\$10,000 Steubenville and Indiana Railroad bonds.

7.000 Phila, and Reading Railroad bonds. 1,000 Phila. and Reading Railroad bonds.

5,000 Lehigh Valley Railroad Company 41 per cent. bonds.

20,000 notes of Darlington, Runk & Co.

6,000 Philada., Wilmington and B. R. R. 4 per cent. bonds.

3,000 Germantown Passenger Railway bonds.

4,000 Lehigh Coal and Navigation 6 per cent. gold bonds.

8,000 Northern Central consolidated gold mortgage 6 per cent. bonds.

And whereas, A. Howard Ritter, executor of the estate of William M. Runk, has paid to the said Philadelphia Protestant Episcopal city mission, on account of the same, the sum of \$2,100 in cash, and has handed to the said Philadelphia Protestant Episcopal city mission the following securities:

Cash for two notes of Darlington, Runk & Co., \$20,000. \$3,000 Lehigh Valley Railroad Company 4½ per cent. bonds. 6,000 Philada., Wilmington and B. R. 4 per cent. bonds. 4,000 Lehigh Coal and Navigation 6 per cent. gold bonds. 6,000 Northern Central consolidated gold mortgage bonds.

leaving a balance due at the date hereof of \$21,963.85 in cash, and the following securities:

\$10,000 Steubenville and Indiana Railroad bonds.

7,000 Phila. and Reading Railroad bonds. 1,000 Phila. and Reading Railroad bonds.

2,000 Lehigh Valley Railroad Company 42 per cent. bonds.

And whereas, owing to the settlement of the estate of the said William M. Runk, the executor may not be in a position to pay over the balance of the said cash and securities until the expiration of one year from the date of the death of the said William M. Runk.

And whereas, the Protestant Episcopal city mission desires to obtain the full amount in the hands of the said William M. Runk on the day of his death prior to the expiration of said year, and Mary A. Barcroft is willing to forthwith pay the following amount due said Protestant Episcopal city mission and to take an assignment of its said claim against the estate of said William M. Runk so that said Protestant Episcopal city mission shall have the use of its funds at once.

Now, therefore, in consideration of the premises, as well as in consideration of the sum of \$31,963.85 in cash in hand paid and the delivery of the following securities:

\$7,000 Phila. and Reading Railroad bonds. 1,000 Phila. and Reading Railroad bonds.

2,000 Lehigh Valley Railroad Company 41 per cent bonds.

the receipt whereof is hereby acknowledged, the said Philadelphia Protestant Episcopal city mission has and it has by these presents assigned and set over unto the said Mary A. Barcroft, to her own proper use, without any account to be given for the same, all sum or sums of money or securities due or owing by the said estate of William M. Runk to said Philadelphia Protestant Episcopal city mission by virtue of his having been the treasurer of the same, and all the right, title, interest and demand in and to the same. And the said Philadelphia Protestant Episcopal mission doth give and grant to said Mary A. Barcroft full power and authority to demand and receive said money and securities to her own proper use and behoof and upon receipt thereof to give discharges for the same or any part thereof.

Witness the corporate seal of the said Philadelphia Protestant Episcopal city mission duly attested this eighteenth day of Febru-

ary, 1893.

SEAL.

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(Signed)

PHILADELPHIA PROTESTANT EPISCOPAL CITY MISSION, By O. W. WHITAKER, President.

Attest: W. A. FARR, Secretary.

Mr. Johnson states that defendant will offer in evidence when it has been prepared by plaintiff's counsel, a list showing the policies of insurance and dates subsequent to October, 1891, on the life of Mr. Runk, and the amount of premiums paid on said policies and on those heretofore issued.

80 FRANK E. HAMMER, having been duly sworn, was examined as follows:

By Mr. Johnson:

Q. You are connected with the John Hancock Life Insurance Company?

A. Yes, sir; I am district manager.

Q. Had your company given any insurance policies on the life of Mr. Runk after October, 1891?

A. Yes, sir. Q. To what amount?

A. \$20,000.

Q. What was the annual premium?

A. \$452 each. There were two policies of \$10,000 each, and they aggregated \$904 premium.

Q. When was it issued?

A. It was issued January 27, 1892.

Cross-examined.

By Mr. BISPHAM:

Q. You are a representative of the John Hancock Company? A. Yes, sir.

Q. That policy was paid, was it not?

A. Yes, sir.

Mr. Johnson offers in evidence on behalf of defendant the application signed by William M. Runk, dated Philadelphia, November 6, 1891, on the basis of which the policy of insurance in this case was issued.

(Objected to on the ground that it appears by the policy offered in evidence that the application was not attached to the policy, and, under the act of 1891, the application not being attached to the policy is not to be considered as part of the contract, nor is it ad-

missible in evidence.)

Mr. Johnson offers in evidence this paper not for the purpose of making the same as an application part of the contract, but for the purpose of proving that an independent contract was entered into by William M. Runk, by which he agreed that he would not die by his own act, whether sane or insane, during the said period of two years, and he offers it as a collateral contemporaneous agreement.

(Objected to. Decision reserved.)

Defendant rests.

Plaintiff's Rebuttal Evidence.

HAROLD PIERCE, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

- Q. What is your business?
 - A. Insurance agent.
- 81 Q. Where do you reside?
 - A. In Germantown.
 - Q. Where do you carry on your business?
 A. No. 331 Walnut street, Philadelphia.

 - Q. How long have you been engaged in the insurance business? A. Since 1886.
- Q. Have you been engaged in that business in Philadelphia since that time?
- A. I was in Philadelphia a short time in 1886, and then I went to Pittsburg and stayed until the latter part of 1891, when I returned to Philadelphia, and since then have been here.
 - Q. Did you know William M. Runk?
 - A. I did.
 - A. When did you make his acquaintance?
- A. About 1878, I should say, to 1880, somewhere in that neighborhood.
 - Q. Did you place any insurance for him in 1886?
 - A. Yes, sir.
 - Q. In what company? A. The New York Life.

 - Q. Are you an agent of that company? A. I am an agent of that company.
- Q. How much insurance did you get Mr. Runk to take in the New York Life Insurance Company?
 - A. \$50,000 at that time.
- Q. You had nothing to do with the arrangement of the other \$50,000 that Mr. Runk afterwards took out?
- A. No, sir; I had nothing to do with that. This was in 1886 that I wrote this.
- Q. State what interviews you had with Mr. Runk on that subject, and what difficulty, if any, you had in getting him to make the insurance.
- A. I had a number of interviews with him, and it took considerable time to get him to finally decide to take that policy.
 - Q. Was there more than one policy, or do you not recall? A. I couldn't say whether it was in one or two policies.
 - Q. That was all he was induced to take in 1886?
 - A. Yes, sir.
- Q. Then I understood you to say you left Philadeiphia and afterwards returned?
 - A. I left Philadelphia a short time after that.
 - Q. You returned when?

A. In 1891.

Q. Do you recollect what month you came back?

A. I came back to Philadelphia in September of 1891.

82 Q. What did you do with reference to endeavoring to effect an insurance on Mr. Runk's life after your return to Philadelphia?

A. I went in to see him after that when I came back and asked

him if I couldn't try to put him in some other companies.

Q. How soon after your return to Philadelphia did you see Mr. Runk on this subject?

A. I should say right at the latter part of September, or the beginning of October, 1891.

Q. Was that soon after your return?

A. Yes, sir.

Q. Where did you call on Mr. Runk?

A. At his office.

Q. How often did you see him?

A. A number of times.

Q. At your first interview was any amount of insurance mentioned between you?

A. Not that I know of.

Q. Did Mr. Runk agree to take any insurance at that first interview?

A. I should say no.

Q. Did you see him again?

A. Yes, sir.

Q. What did he say at this interview when you wanted him to take insurance?

A. It is hard to remember just what took place at this time.

Q. Can you without giving the words say whether he said he would or would not take it?

A. I know when I first saw him he wouldn't consent to any insurance, and it took several interviews to get him to do it, but as to the exact words I couldn't tell you.

Q. After you had these several interviews with him, and he con-

sented, was any amount named then?

A. Oh, a small amount.

Q. What do you mean by "a small amount"?

A. \$10,000, \$15,000 or \$20,000.

Q. Had you reference to any other amounts or any other insurance when you spoke of "small amounts"?

A. No.

Q. After you had these conversations with Mr. Runk on the subject of insurance did you or did you not see Mr. Lambert of this company?

A. I did.

Q. Who is Mr. Lambert?

A. General agent of the Mutual Life Insurance Company of New York.

Q. He was then?

A. He was then, yes sir.

Q. What did you tell him about Mr. Runk's wishing to 83 take insurance?

A. I can only give you a general idea of what I told him. I told him I was trying to get Mr. Runk for some more insurance, and I believed I could get him for the Mutual Life; that I would do that if we could come to some agreement.

Q. What did Mr. Lambert say?

A. Mr. Lambert offered me a commission for securing him for the

Q. Was the commission dependent on the amount that was secured?

A. Yes, sir.

Q Did you see Mr. Lambert more than once?

A. Several times.

By the COURT:

Q. When was this?

A. In 1891. October of 1391, I should say.

By Mr. BISPHAM:

- Q. Did you see Mr. Runk again during the month of October, 1891?
- A. I saw him several times before I could get him to take the insurance.

Q. What did Mr. Runk say when you were pressing him? A. He would only consent to \$15,000 or \$20,000 at first.

Q. During your interviews with Mr. Lambert did you at any time give him a list of insurance on Mr. Runk's life that existed at that time?

A. Yes, sir.

Q. What did Mr. Lambert say to that?

A. I don't remember.

(Recess until 2 o'clock p. m.)

2 P. M.

The Court: In regard to Mr. Johnson's offer of testimony this morning I have as decided a judgment as I could have in view of having disposed of the subject without examination, and it may be of interest to the parties to know without further delay what the decision of the court is. The representation or statement or agreement, call it by whatever name you choose, is in my estimation a part of the application for insurance, and it constitutes a condition on which the policy was applied for and obtained, as much so as any representation contained in the paper itself, and it is therefore by the statute excluded by reason of the fact that a copy was not attached to the policy. The suggestion of counsel that it is offered not to defeat the policy, but by way of set-off, or as the roundation of a claim to be set off, is in my judgment not sound. The only use that could be made of it, as I view the subject, would be to defeat the policy as one of the conditions on which it was obtained. If it could be used as the foundation of an independent claim and

thus be made the subject of the set-off, of course suit could 84 have been brought upon it before to recover back what has been paid, or could be brought upon it hereafter to recover what shall have been paid if the plaintiff here recovers. It is very clear that could not be done; no such suit could be maintained. If a suit were brought upon this agreement to recover the damages which have been suffered in consequence of the failure to keep it, why, the answer would be, this was a subject for consideration in the suit brought by the plaintiff on the policy. That suit necessarily involved it and the judgment thus obtained would be a complete answer to any suit for breach of that agreement. I refer to this simply for the purpose of showing that it cannot be used by way of set-off as a foundation for an action or for an independent claim. Its only office is to afford the defendant a defence to the policy as a condition on which it was issued. Viewing it in that light, it stands upon an equality, it cannot be distinguished, in my judgment, from any other statement or promise made in the application for insurance; in my judgment it is within the law and spirit of the statute. The statute intended that the policy shall exhibit on its face, or the policy in connection with whatever it refers to shall exhibit to the insured the conditions on which he holds the policy. The object of this would be to limit the policy of insurance, to qualify it, to make it available only in case the party lived up to this contract.

I must therefore sustain the objection.

Exception for defendant.

Examination of HAROLD PIERCE resumed.

By Mr. BISPHAM:

Q. Before the recess you stated that Mr. Runk at first was only willing to take insurance up to fifteen or twenty thousand dollars. Look at these six policies which are in evidence in this case and let me know if you recognize them. (Policies handed witness.)

A. Yes, sir.

Q. Did you see them at or about the time they were issued?

A. I delivered them to Mr. Runk.

Q. From whom did you obtain them?

A. From Mr. Lambert.

Q. Do you remember about when you delivered them to Mr.

A. I judge about a day or two after they were issued.

Q. They were dated the 10th of November, 1891?

A. Yes, sir. I probably delivered them on the 11th or 12th, after that date.

Q. You say you received them from Mr. Lambert? A. Yes, sir.

Q. Where?

A. At the office of the Mutual Life in Philadelphia.

Q. At the time that you delivered these policies to Mr. Runk

what was said in regard to the amount of the policies that he was to take?

A. My recollection is that I did not give them all to him 85 at that time.

Q. Why not?

A. I was afraid if I gave them all to him I might scare him from taking anv.

Q. Why? A. Because he was only considering about fifteen or twenty thousand dollars.

By the Court:

Q. I do not understand you. Had he not applied for these policies?

A. I very often have more issued than what the applicant has applied for.

Q. Policies issued that no application has been made for?

A. The companies will issue an extra amount on the one application up to the limit the company will put on the man's life.

Q. If he applies for a policy of \$10,000, if he is willing to put \$50,000 on his life it will issue the policies up to \$50,000.

A. Yes, sir.

Q. And then take a subsequent application for them?

A. It is not necessary, because it is made part of the original application.

Q. That they shall issue additional policies?

A. At that time. They have to be all under that application and examination.

Q. Does not the application specify the amount? A. Sometimes. Generally; yes, sir.

By Mr. BISPHAM:

Q. Is it not sometimes left in blank as to the amount?

A. Yes, sir; I very frequently get a signature in blank. Q. Please explain what reason, if any, there was for dividing this amount of the insurance, \$75,000, up into these six policies?

A. Simply because only part of it he thought he would take.

By the COURT:

Q. You did not expect him to take the whole of it?

A. I wanted him to take all of it; yes, sir. Q. You did not expect him to take it?

A. I was very uncertain whether I could get him to do it.

Q. After getting him to do it you would fill in the amount in the application you made?

A. Unless he told me that I must put in a certain amount.

Q. Did the company know you were doing business in that way?

A. It is very frequently done. Q. You would fill in the amount after you would sign the application?

Q. And he gave it to you in blank?

A. Yes, sir.

Q. Would he be aware he gave it to you in blank?

A. Sometimes; yes, sir. Frequently we say, "Will you take a policy," and you sign that application and we bring you a policy.

Q. Without naming any amount? A. Without naming any amount.

By Mr. BISPHAM:

Q. At all events, ultimately these policies were all taken by Mr. Runk?

A. Yes, sir.

Q. About how long were you occupied in getting him to take these policies?

A. They were not finally settled on until the end of December or

the middle of January.

Q. What do you mean by settled on?

A. That he agreed to take them.

By the COURT:

Q. Do you mean he hesitated about it?
A. Yes, sir; hesitated.

Q. You urged him?

A. I urged him as hard as I could.

By Mr. BISPHAM:

Q. And he finally took them?

A. He took them.

Q. You say that was about the middle of January?

A. It was certainly the end of December or the middle of Jan-

uary. Not before that.

Q. After Mr. Runk concluded to take this full line of insurance \$75,000, did he have any conversation with you on the subject of insuring his life in the Home Life?

A. Yes, sir.

Q. When did you have that talk with Mr. Runk?

A. Some time in the middle of January, 1892.

Q. Were you agent for the Home Life?

A. No, sir.

Q. Who was?

A. William M. Moore.

Q. What did Mr. Runk say when he spoke to you about taking out insurance in the Home?

A. I asked him if he would take it as a favor to Mr. Moore, and after a little talk he said, "Oh, well, I will take a small policy with

Q. Did you report that to Mr. Moore?

A. I reported that to Mr. Moore.

Q. What did you say to Mr. Runk, if anything, to induce him to take this additional amount? 87

A. In the Home Life do you mean?

A. After Mr. Moore became agent of the Home Life he asked me if I would not see Mr. Runk, as I had insured him, and see if he would not give him a start in his business in Philadelphia. So I went to Mr. Runk and said that Mr. Moore, who was formerly with the New York Life, had taken the agency of the Home Life, and asked him if he would not as a favor start Mr. Moore on a policy for insurance. I said that I had been a customer there for many years, and that if he would take this policy I thought we could induce Mr. Moore to also become quite a good customer at that place, Darlington & Runk's. That is about the terms I used at first with Mr. Runk.

Q. Afterwards did you refer to any other persons holding large lines of insurance?

A. Yes, sir.

Q. Tell us what it was.

A. Afterwards when Mr. Moore and myself met Mr. Runk we used the inducement that it would be very nice if he would become the third largest insurer in the country, and we used that argument for all it was worth; we said it was not possible for him to get the second, I think, that John Wanamaker and Hamilton Disston were considerably above him, but by taking this additional in the Home, and a little more he could become the third largest in the country.

Q. That was before he had agreed to take this policy in the

Home?

A. That was before he had agreed to take more than five or ten thousand dollars in the Home Life. That is all he had agreed to take when we used this argument.

Cross-examination

By Mr. Johnson:

Q. Let us get your relations to this matter. You never were the agent requested by the Mutual Life Insurance Company of New York to obtain life insurance takers, were you?

A. No. sir.

Q. You were the agent of an entirely different company, the New York Life, were you not?

A. Yes, sir.

Q. You received from them special permission to act as their agent?

A. Yes, sir.

Q. Had you any license to act as an insurance broker?

A. No, sir.

Q. But you did act notwithstanding you had no license, did you? A. I occasionally got other insurances.

Q. Your desire was to get insurance and get a commission on it? To get people to take insurance, was it?

A. Yes, sir.

88 Q. And you had no authority from the Mutual or the Home to do that business?

A. I never acted for the Home Life.

Q. If Runk was so little anxious to get this insurance, how is it that he went and insured beyond all this in the Berkshire \$20,000

and the John Hancock \$20,000?

A. He insured in the Berkshire because he told us it was impossible for him to take this increased amount in the Home Life, unless he fulfilled a pledge to an agent in the Berkshire that before he took other insurance he must do something for him. We said, "All right, give it to him."

Q. He told you he had to take \$20,000 in the Berkshire if he took

this additional quantity?

A. Yes, sir.

Q. How about the John Hancock; there was no pledge there, was there?

A. We argued that in order to get him into the third highest

insured man in the country.

Q. Did you not tell us that story about the third highest as having occurred after this thing had been done when you testified before?

A. Not that I know of.

(Reading.) "Q. When did you see Mr. Runk last before his death; how shortly before? A. Two or three days. Q. Where was he? A. In his store. Q. Did you discuss insurance matters with him then? A. Yes, sir. Q. What insurance matters did you discuss? A. I can't tell the exact wording at that time, but for some time I had been saying to him, 'Mr. Runk, there are three men today that are more heavily insured than you are, and by a very little more insurance you can become the third man. That is as strong and high as you will go. Why not become the third insured man in the country?" I had been working on that for some time with him. Q. How much had he gotten up to at the time you began to apply? A. I don't remember the exact figures. You know better than I do. Q. You must have known it was somewhere over \$500,000? A. There were three men ahead of him and I wanted him to go to the third place. I knew he would not take the second place."

Mr. Johnson continued to read from testimony until the end of the answer, "Oh, well, I will think of it. Something of that kind he said. Of course I wanted to push it for all he was worth." That

is what you did then?

A. I did; and I believe the same argument was used for the Mutual Life.

Q. Do you want this jury to understand that these insurance policies came back from New York before you had talked, as you say, Runk beyond ten or fifteen thousand dollars?

A. Yes, sir.

Q. Had you discussed any part of that ten or fifteen thousand dollars being put in the name of the wife? 89

A. Undoubtedly.

Q. How much was to be put in the name of the wife?

A. I don't remember now.

Q. Ten or fifteen thousand was the aggregate, and all that you had discussed before the policies came back. Suppose I show you this application in which it is said the full name of the person to whom "the insurance is payable to self, except one of twenty thousand dollars to be in favor of Evelyn P. B. Runk, if living, if not, to my estate."

(Objected to. Objection overruled. Exception for plaintiff.)

Q. Won't you explain to this jury why and if you and Runk had only talked about ten or fifteen thousand dollars being taken by him until after these policies had come back from New York that in the application which was sent over to New York his wife was named as a beneficiary to the extent of \$20,000 of one policy?

A. Because I thought if I placed a larger amount that his wife

should have some of the benefit of it.

Q. But the larger amount of \$10,000 or \$15,000 is not only the larger amount, but a good bit more than the amount. But a policy of \$20,000 in the name of his wife came back from New York, did it not?

A. Yes, sir.

Q. And six other policies came back from New York, did they not?

A. Yes, sir.

Q. All signed and sealed and executed?

Q. Four of \$10,000, one of \$20,000 and one of \$15,000, did they not?

A. Yes, sir.

Q. You want this jury to understand that these six policies, aggregating \$75,000, and the policy in favor of the wife of \$20,000 came back from New York signed, sealed and executed, and you had only talked to this man prior to that time of \$10,000 or \$15,000 insurance. Do you?

A. That is all that was actually considered.

Q. How on earth did these policies come to be made out, four of \$10,000, one of \$20,000 and one of \$15,000, if you had not discussed with him the manner in which the policy would be cut up?

A. It is a very common practice to get policies cut up into different amounts so if you cannot place the whole amount to place part.

We are very apt to do it.

Q. Do you mean to say that these policies were executed in six different executions in different amounts and you had no talk to this man before the application went on the subject of the division?

A. I do not recollect that these special amounts were fixed between

Mr. Runk and myself.

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Q. Does not the application contain a statement on its face of a subdivision into those different amounts?

A. Yes, sir.

Q. Did you get that out of your head altogether?

A. Very likely.

- Q. When you delivered these policies to Runk, you agreed with the insurance company to see them whole on the premiums, did you not?
 - A. When I first delivered them?

Q. When you got them from them.

A. If I placed them; yes, sir.

Q. And you took from Runk part cash and part store orders on Darlington, Runk & Co., did you not?

A. When I finally placed them; yes, sir.

Q. And when Runk died there were nearly \$1,800 due on these store orders and Joseph G. Darlington cashed them; is that not so?

A. I don't think there were.

Q. How much do you think there were?

- A. My impression is that there was a very small amount due at that time.
- Q. Runk did settle with you part cash and part store orders, did he not?

A. Yes, sir.

Q. You were to make good the whole amount to the insurance company in cash?

A. Yes, sir.

Q. There were some of these store orders on Darlington, Runk & Company which paid this insurance which were not cashed at the time of Runk's death, were there not?

A. There was some balance I think due me.

Q. And although they had not been accepted by Darlington, Runk & Company before Runk's death, Joseph G. Darlington made the unpaid balance good, did he not?

A. The unpaid balance was paid by them. It was recognized.

Q. Tell us how much that was.

A. I couldn't tell you. I don't know.

Q. Try and give us your best judgment of the amount.

A. I haven't the slightest idea now.

Q. It has not been such a terrible long time ago.

A. I buy considerable at Darlington, Runk & Company's and Joseph G. Darlington's, and I can't tell you how much my bill was at that time or how much I bought since then. It is not possible for me to recollect.

Q. This application which was signed by Mr. Runk was an application that was sent on to New York before the policies were issued,

was it not?

A. Yes, sir.

Q. And stayed necessarily in New York?

A. Yes, sir.

Q. It never came back here?

A. No, sir.

Q. And the policies, seven in number, were issued in accordance with this application signed by Mr. Runk and to the extent of \$95,000, were they not?

1. Yes, sir.

Q. When was it that Runk asked that the premiums should be paid, one-half annually in November, 1892, and thereafter annually in May? Was that before or after the policies came back?

A. I don't remember.

Q. I see here written in this application that antedated, of course, the policies, the terms on the policy applied for are "To be payable annually for the term." That is printed, and then, "From November 10, with privilege of paying one-half annually in November, 1892, and thereafter annually in May." It was discussed between yourself and Runk before that application was sent that that arrangement should be made, was it not?

A. I knew that there was a talk of that kind. When that talk

was I don't recall at all.

- Q. The time is embodied in this application that was signed on the 6th of November and sent to New York and stayed, is it not? A. Yes, sir; but that application was filled up afterwards.
- Q. Do you mean to say you did not have a talk before this application ever went to New York upon the subject with Runk on having a different time of paying his premiums?

A. I mean to say that application was signed in blank.

Q. The whole of it in blank?

A. Yes, sir.

Q. Do you mean to say the whole of that application was signed in blank?

A. Yes, sir.

Q. Who filled it up? A. William H. Lambert.

Q. Did you not fill it up partly?

A. No, sir, I don't think so. If you will let me see I will tell you. (Looking at application.) I don't think my handwriting is on it at all. I think it is all William H. Lambert's.

By the Court:

Q. When you say it was delivered in blank, do you mean it was blank in all respects except as to his name?

A. I mean that Mr. Runk signed that application in blank and

Mr. Lambert filled it up afterwards.

Q. You mean that the filling up was done after the signatures?

A. Yes, sir.

Q. The answers to the questions?

A. Yes, sir; from information that I had.

By Mr. Johnson:

Q. Were any of these blanks filled up after these policies came back from New York?

92 A. I never saw it after I gave it to Mr. Lambert.

Q. Where did Lambert get the information from that Runk wanted to pay in this way, annually after November, 1892.

A. From what I gave him.

Q. Then Runk did discuss that with you before the application went, did he?

A. I don't know just when he discussed it: I say he did at some-

time discuss that with me. I remember it always.

Q. Do you mean to say you were discussing with this man for a special time of paying a premium on a policy of \$10,000 or \$15,000?

A. It is very common when men take insurance-

Q. That is not the question. (Question read.) How on earth did Mr. Lambert, if he did not get it from you or from Mr. Runk, know that he wanted \$20,000 in the name of his wife?

A. He got it from me.

Q. Then Runk discussed that with you, did he?

A. I said I felt that part of it should be in his wife. passed between Mr. Runk and I at each interview it is impossible for me at this time to say.

Q. Do you mean to say that Lambert knew how this \$95,000 was to be divided except as he was told by you, between the wife and

Runk?

A. No, sir; I told him how to fill it up.

Q. Who told you? Runk, of course, did he not? A. Certainly Mr. Runk told me.

Q. You got from Runk the information to fix it up in this way, did you?

A. To cut it up into these policies?

Q. Yes.

A. Not necessarily.

Q. I did not ask what is necessary; I asked what occurred.

A. I mean to say that I cannot recollect at this time what passed

at each interview with Mr. Runk.

Q. I am not getting at interviews; I am getting at what preceded this application. Here is an application to which Runk's signature is providing that there shall be a \$20,000 policy "in favor of Evelyn T. B. Runk, or, if not living, to my estate," and a policy comes back within two days in that way. I want you to tell this jury if you had only been talking to Runk of \$10,000 or \$15,000 policy, how on earth that amount got into the application?

A. I can tell you what I know of the whole matter.

Q. Answer that question. A. I cannot answer that.

Q. You can answer it as fully as you please to answer it.

A. I cannot answer it in that way.

Q. How did Lambert know that Mr. Runk's wife's name was Evelyn T. B., Eveyln being spelled "y-l-n"?

A. Mr. Runk gave it to me.

- 93 Q. How much did Runk tell you he wanted in his wife's name?
 - A. I don't remember.

Q. Will you say he did not tell you the \$20,000 that was put in?

A. I don't remember at this time.

Q. You said a little while ago you only talked of a total of \$10,000 or \$15,000, and now you do not know but what he did tell you \$20,000 for his wife.

A. I know that he did not talk a very large amount at the first. Q. I want to know by whose direction there was written in to that application "\$20,000 to be in favor of Eveyln T. B. Runk if living; if not, my estate"?

A. I got certain information from Mr. Runk, and that informa-

tion I gave to Mr. Lambert.

- Q. Was that information information you got from Mr. Runk?
 A. Whatever information I gave Mr. Lambert I got from Mr. Runk.
- Q. I asked you whether the information that the policy to the extent of \$20,000 was to be in his wife's name came from Runk?

A. I don't know the exact amount that he gave me.

- Q. Now you say this application was left entirely in blank. Will you please tell me where the information came from that there were \$315,000 of insurance in other companies, New York, \$100,000; North Western, \$50,000; Penn, \$30,000; Provident, \$20,000; Ætna, \$15,000; Mutual Benefit, \$10,000; State Mutual, \$20,000; Connecticut Mutual, \$10,000; Equitable, \$15,000; New England, \$20,000; Travelers, \$5,000; Commercial Alliance, \$10,000, and Life Union, \$5,000?
- A. I took the information from the last application of the New York Life, and asked Mr. Runk if he had taken any since he took the New York Life.
- Q. What was the date of the last application to the New York Life?

A. I think it was in 1889.

Q. Were not some of that \$315,000 issued after 1889?

A. I don't know.

Q. Will you say that you got from the application to the New

York Life that information?

- A. I say I got the information on the last application to the New York Life. And I asked Mr. Runk if he had taken any since then, and he gave me the other insurance, and I put it in that list, and gave it to Mr. Lambert.
- Q. Did you have before you in November, 1891, the application to the New York Life?

A. A copy of it; yes, sir.

Q. Where did you get it from? A. In the office in Philadelphia.

Q. You took it to Runk?

A. I took just the information that I wanted to Mr. Runk.

Q. Did you take that to him before this application was signed?

A. At the time the application was signed I got the information from him.

Q. Where did you get the information from that is filled in here

that Runk was born on the 11th of October, 1846, in Huntington county, New Jersey?

A. The application to the New York Life.

Q. Did you take that to him?

A. No, sir.

Q. When did you get that information, before the application was signed?

A. I had had that for a long time.

Q. How many policies did you show Runk do you say the first time you showed him any?

A. I think, to the best of my knowledge, I showed him probably

from twenty to forty thousand.

Q. Do you have a positive recollection on that subject? A. As far as I can recollect, I believe that was the case.

Q. Do you have any recollection that you showed him from

twenty to forty thousand?

- A. It is my general belief that is what I showed him at that time.
 - C. You have some memory that you showed him that?

 A. That is what I believe I showed him.

Q. Was his wife's \$20,000 amongst them?

A. I don't know.

Q. Try and recall whether included in it was the wife's \$20,000?

A. It is not possible now for me to remember it.

Q. You had nothing to do with the John Hancock \$20,000, had you?

A. At the time we placed the Home Life the John Hancock was

Q. Had you anything to do with that?

A. Yes, sir.

Q. Did you negotiate it?

A. I say yes.

Q. I do not like that hesitating way of "I say yes." What made you hesitate and then what made you say yes? What was in your mind that made you do it that way?

A. Simply because I have not the distinct recollection of where the John Hancock application was written and the day it was written. I think it was written at the same time as the Home Life.

Q. Did you get part of the premium or any commission?

A. Yes, sir.

Q. How much commission did you get in the John Hancock, and who paid it?

A. Mr. Harmar. Q. How much?

A. I don't remember.

By the Court:

Q. Did this application contain a provision that the answers to the various questions had been read over to the applicant? I mean the application which you took from him which you say was in

blank. Did it contain a provision that the answers should be read over to him after they had been written out?

A. Yes, sir.

Q. You took his signature to that statement while the answers were not yet answered at all and handed it over to Mr. Lambert?

A. I said I had the information—

Q. I want to know the fact, whether you did that or not?

A. Yes, sir; I gave it to Mr. Lambert to fill up.

Q. That is, you had him sign a statement that the answers to the various questions that he was called upon to answer as preliminary to taking his policy, and that constituted the condition on which the policy issued, you had him sign that while not a question had been answered?

A. Yes, sir. He said "Pierce, you have the information."

Redirect examination.

By Mr. BISPHAM:

Q. I think you said that the premium was paid to you by Mr. Runk partly in cash and partly in store orders. Is that so?

A. Yes, sir.

Q. And you said also that some of the store orders were not paid until after Mr. Runk's death.

A. I had a running account with him, and I think there was

some balance due me at that time.

Q. Do you mean paid to you or paid to the company? Had the company anything to do with the store orders?

A. No, sir.

Q. Who settled with the company?

A. I paid Major Lambert the net amount due on the policies after deducting my commission.

Q. When did you make that payment?

A. I think it was in January. Not before the latter part of December or the early part of January. I think that was the time.

Q. What were your commissions that you got from this com-

pany?

A. I got sixty-five per cent. and \$6 a thousand for placing the whole amount. I would not have got quite as large a bonus if he

had not placed it all.

Q. You had known Mr. Runk, as you have told us, for a number of years, and had got him to take policies in the New York Life. Had you filled up any of the applications for him for the policies to the New York Life?

A. I think the first time I ever wrote him was for the New York Life, and undoubtedly I filled up the application in his pres-

ence.

96 Q. How did you fill it up; who gave you the information?

A. I asked him the questions, and he answered them.

Q. And I understand you to say, that when the application for

the present policies, the policies in suit, was signed, you had a copy of an application which had been made to be New York Life?

A. Yes, sir.

Q. Had you that with you in your interview with Mr. Runk?

A. I don't believe I had it. I think I had it in my office.

Q. Did you have any conversation with Mr. Runk in regard to the division of this insurance?

A. I think there is no doubt but the first policies he said "make them \$15,000 or \$20,000," something of that kind, but as to making them all of that general line, I don't think he gave me that full information as to the full amount.

Q. What did Mr. Runk say at the last conversation you had with

him before these policies were issued. Do you recollect?

A. No.

Q. Did you have any additional talk about the amount of the policies; as to taking the additional amount? I want to know whether there was any additional amount named in your last conversation before these policies were actually handed him?

A. I think very likely before I took out his last application I

probably talked some larger amount.

JOSEPH G. DARLINGTON, having been recalled, was examined as follows:

By Mr. BISPHAM:

Q. You are of the late firm of Darlington, Runk & Co., of whom Mr. Runk was a partner?

A. Yes, sir.

Q. How long had you been associated in business with Mr. Runk?

A. Fourteen years on the first day of August, 1892.

Q. At the time of his death you were carrying on business under articles of copartnership which were signed when?

A. Originally in 1878.

Q. You had been carrying on business under substantially the same articles of copartnership since 1878?

A. Yes, sir.

Q. The amount of capital, as you have already testified, which Mr. Runk was to keep up, was one hundred thousand dollars?

A. \$100,000; yes, sir.

Q. Did you go abroad in the summer of 1892?

A. I did.

Q. When?

A. On the 6th day of July. Q. When did you return?

A. On the 28th day of September.

97 Q. Did you advise Mr. Runk that you were to return on that day?

A. I did.

Q. How?

A Fot! by letter and by cable.

Q. Did you receive any acknowledgment from him?

A. No. I received a cable from him.

Q. You returned home on the 28th of September?

A. I did.

Q. Had you arranged with Mr. Runk that he should meet you in New York?

A. I had not.

Q. You were in the habit of going abroad?

A. Regularly.

Q. You went abroad, I suppose, on business, did you not?

A. On business.

Q. For the purchase of goods?

A. Yes, sir.

Q. Had Mr. Runk any habit as to meeting you on your return?

A. He always met me at the Broad Street station.

Q. When you returned in September, 1892, did Mr. Runk meet you?

A. He did at the Broad Street station.

Q. What was Mr. Runk's appearance and condition when he met ou?

A. Can I tell it just from the commencement?
Q. Go on and tell the whole story to the jury.

A. I arrived at Broad Street station on Wednesday evening about seven o'clock and was surprised at not seeing Mr. Runk on the platform where he always had met me. William Nice was on the platform with one of Mr. Runk's boys to meet me. We passed along the platform and passed through the lobby railing, and when we were in the vestibule of the station William Nice turned to me and said, "Mr. Darlington, there is Mr. Runk." Up to that time I had not noticed him. I looked around and saw Mr. Runk and stepped forward toward him, and, as I stepped forwards towards him, he stepped back and continued stepping back until he reached the wall of the depot. He had a strange kind of a look and immediately commenced to talk to me about the annoyance he had had all summer regarding the finishing of the Broad Street station; the trains had been running on very miserable time. That was about the burden of his complaint. I was in a harry to take the train for Haverford, and Mr. Runk went with me, and, if my recollection serves me properly, he said, "Let us sit down here," which was the last seat in the last car, which we did. Nothing important passed, for I was anxious to get home. I left him at Haverrord station. I did not see him again that evening.

Q. Do you recollect what day of the week that was?

A. Wednesday evening.

Q. When did you next see Mr. Runk?

A. On Thursday morning about quarter past nine o'clock.

Q. That was at your store?A. At the store in his office.

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Q. Did you have any conversation with him on that day?

A. I asked him if everything was all right, and he said it was. I looked over the memorandum books, which always indicate the con-

dition of affairs, and they were apparently all perfectly correct. I then went about my business, which was entirely different in the business from Mr. Runk's, and I saw very little more of him that day, except just casually.

Q. When was it that you first had any intimation that anything

had been going wrong from your examination of the affairs?

A. Possibly on Friday morning I noticed something that I did not just understand. I had no intimation or no idea of my mind that there was anything wrong, but I noticed something that required an explanation, and that explanation was not given very satisfactorily, and I passed it over, and it did not make much impression on my mind, because I was very busy.

Q. Explanation from whom?

A. From Mr. Runk. I left him on Friday morning, and did not see much of him, and Saturday I saw him and asked him again and referred to this matter and the explanation was still more unsatisfactory. That is, there was nothing whatever said about it. All this time there was no impression on my mind or thought that Mr. Runk had done anything out of the way whatever. No such impression whatever.

Q. What was the matter about which you inquired of Mr. Runk?

A. The matter that I noticed, that it was the time of the year when we used a great deal of money always taking goods out of bond, and we used a great deal of money, and one of the banks, who always loaned us money at that season of the year I noticed had not done so, and he had not obtained it, and I asked him why, and he could not give me a satisfactory explanation except that the bank was poor. It struck me as unusual, but there was no doubt in my mind whatever but what the statement was perfectly correct. That same conversation occurred on Friday and on Saturday. During those days I saw very little of Mr. Runk because he was an office man, and I was in the business and naturally very busy, just coming home from Europe.

On Monday morning I referred to the matter again, and I told him I wanted him to go to the bank and tell me whether he was going to get that money, because if he was not I would try to have it as we wanted it right away for insurance duties. He returned to the store about eleven or twelve o'clock. I was then busy on one of the upper floors of the building, and he came to me and said he wanted to see me. I told him to go over in my office, and I would be there in a moment. I went over and Mr. Runk was sitting by my desk looking as I have never seen a man look before or since.

Q. Describe him.

A. I cannot describe his color or his whole expression because it was something I had never seen before. The man was absolutely vacant. He looked green. I do not know how to describe it. I looked at the man. I would like to say right here that Mr. Runk and I never had a word of difference during fourteen years' daily connection. He had my absolute confidence, and I think I had his. I looked at him and said, "Well, William, what is it?" He said, "Joseph, I have done very wrong." I said,

"What have you done?" He said, "Well, I am involved." I said, "How much?" He said, "Ten thousand dollars." I said, "Is that all?" He said, "That is all." I turned to him and said, "Now, William, I would rather you would tell me the truth. If you have ruined me while I was in Europe, I want to know it, because I would rather know it, and we will straighten things out, and I am perfectly able to commence this business over again, but I want to know it." His answer was, "As true as there is a God in heaven that is the truth." The whole sorrow seemed to be that he had lost my confidence, and I never would believe in him, and I would not keep him there, and we had spent fourteen years of happy life together, and that seemed to be his burden. The man was an absolute wreck, so far as any judgment could be formed of a man. This burden was upon him. I did not talk long about it. We were just as calm as two men could talk. There were no harsh words between us, no angry words of any description. On Tuesday morning I returned to the matter again, and asked him if that was everything, and he said it was. My office was in a different part of the building, where I always went first in the morning and immediately went to Mr. Runk's office downstairs. On Tuesday I went to the office again, as my custom, and we did not chat much about it, but later in the day I had another conversation with him and he reiterated exactly what passed the day before. He seemed to be quite a different man from Mr. Runk. On Wednesday we had a talk about one o'clock.

Q. Did anything further pass between Mr. Runk and yourself on

Tuesday?

A. Nothing but on the general subject. Q. Tell us what was said by him.

A. Just the same as on Monday, that this was everything. I asked him again, and repeated the question, if he had told me the truth, and he said he had.

Q. Had done what?

A. That he had altered a book which involved him in ten thou-

sand dollars. That was the whole thing.

Q. Did he mention that alteration of the bank book on Monday? A. He said he was involved, and I wanted to know how he was involved, and he said he had altered a figure in the bank book. I said, "What do you mean?" He said, "I have altered the deposit book." I said, "Have you altered the cash book?" He said "No. There is not a scratch of a pen in any book of the firm that has been improperly put there, nor has there been anything done or interfered with in any way with the firm's books," which

100 afterwards proved to be absolutely true. He said, "I have altered the deposit book to the amount of ten thousand dol-I said, "What in the world did you do that for?" He said, "I don't know why I did it." My reply to him was, "If you were stupid enough to sit down and alter a deposit book, I do not see that you did yourself any good or did the bank any harm. It is the most foolish thing I ever heard of a man doing." He said, "I

think so, too. I think so, too. I think it was foolish, but I did it, and that is what I have done."

Q. This was on Monday?

A. That was on Monday. That was the first intimation I had.

By the Court:

Q. Did you look at the bank book?

A. No, sir. I hadn't the bank book. I asked him, "Where is the bank book?" He said, "It is down at the bank." He said, "When bank books are full they keep the books." I said, "I never heard of that. I never heard of such a thing as that in my life. What does the bank want with a lot of old bank deposit books? I do not know where they would keep them." I said, "I want you to go down and call up the bank and tell them I am coming right down there." That was about five minutes to one. He went down and called up the bank and the answer came back that the president was just leaving the bank, but he would be very glad to see me in the morning. I went there on Tuesday morning and I walked in and I told the president I supposed he knew what I was there for, and he said he did. He said he was perfectly aware of the fact that I was in entire ignorance of this, because it happened while I was in Europe. I asked him if he would show me the book, which he did, and it was simply altering the balance. I forget what the figures were. If it was \$20,000 it was altered to \$30,000, or if it was ten it was altered to twenty, increasing the balance in our favor, for the purpose of allowing our book-keeper to keep his cash book right, because his cash book called for that much much money in the bank, and, therefore, Mr. Runk had to alter this balance for the book-keeper to check that book. The money had been deposited and drawn out without the knowledge of the book-keeper. If the books showed a balance of \$20,000, the bank actually only had in it \$10,000, and Mr. Runk was obliged to alter that ten thousand to twenty thousand to make the book-keeper straight.

By N ". BISPHAM:

Q. About what date was this alteration of the bank book?

A. That I am unable to say. I can tell you when it was discovered in the bank, but when it was made I do not know.

Q. It was some time, as I understand, during your absence in

Europe?

A. I am under that impression. Whether it was actually altered while I was in Europe or not, it was discovered while I was in Europe.

Q. Was it an alteration of a comparatively recent date?

A. It was comparatively recent.

Q. Was it in 1892?

101 A. Oh, I should say so, but I am not clear when it was. I only know it was discovered at the end of June.

Q. That conversation took place on Monday?

A. On Monday and continued on Tuesday. Q. You visited the bank on Tuesday?

A. Yes, sir.

Q. Was your conversation with Mr. Runk on Tuesday before or after your visit to the bank?

A. Both.

Q. Mr. Runk alluded to this circumstance?

A. He did. He alluded to that alteration in the bank account.

By the Court:

Q. Was that the only thing?

A. That was all. The only question he ever acknowledged to me was the alteration of the bank account in the deposit book.

By Mr. BISPHAM:

Q. You had a talk with Mr. Runk before you went down to the bank and then you visited the bank and then you came back. Please state to the jury fully what passed between Mr. Runk and yourself after you returned from the bank on Tuesday morning and saw him.

A. When I came back from the bank I called Mr. Runk aside, and said, "William, you have not told me the truth about this." He said, "Why?" I said, "You altered the balance more than You altered the book more than once." It was always the same amount, but there was a difference of ten thousand dollars or something like that. He says, "Is that so?" perfectly dazed. I said, "Yes." He said, "I didn't know anything about it. I must have forgotten that." He said, "I had no idea of deceiving you, but I must have forgotten it." The man was kind of dazed.

Q. What do you mean by "dazed"?

A. He did not seem to be able to talk coherently. He couldn't talk coherently. He couldn't talk sensibly. He could not give me any practical or sensible answer in the matter. So much so that the conversation was a very short one. I was under deep feeling about the matter.

By the Court:

Q. How long was this before his death?

A. The first intimation I had was on the Monday morning preceding his death, which was on Wednesday, and we are at Tuesday now, and he died on Wednesday evening.

By Mr. BISPHAM:

Q. Have you got through with your conversation on Monday and Tuesday?

A. Yes, sir.

Q. What sort of a business man was Mr. Runk prior to this time? Was he a bright man or a dull man. 102

A. I should not call him either a bright man or a dull I always looked upon Mr. Runk as a man of absolute integrity, and in that respect he was valuable to me.

Q. When you were talking to him about matters of business was

he a man who understood you?

A. He did and he did not. He was a man you could not talk business to.

Q. Did you make any appointment with him on Tuesday to meet

him on Wednesday?

A. No. From the time that I first had the intimation of this, it was not the amount that impressed me, because we did not enter into it, but it was the fact of the deception, and during Monday and Tuesday I naturally was very much distressed, and we had very little conversation together. I had been turning the matter all over in my mind how to adjust it. It had all been arranged with the bank. I got it all fixed at once. On Wednesday morning I had arrived at the determination in my mind what was to be I made an arrangement to meet Mr. Runk, as near as I can remember, about one o'clock, when we had a talk. He came in and sat down and hadn't anything to say. He sat down, and as near as I can remember the conversation took this form: I said "William, I have thought this matter all over, and we are just in the beginning of a season's business. Our minds must be entirely free for this business. This matter must now be dismissed. As to the final solution of it, that is a matter for the future." I said, "There are several matters I would like to speak about however that I have done wrong in not speaking about before. That is, you have too much on your mind for a business man. You are excited and nervous, running to the telephone, I never can have five minutes consecutive conversation with you at all, and I think you are making a very great mistake. If you want to be a useful business man, you have only time for one thing.

We then spoke about our boys, as to their future, and we had as pleasant and agreeable a conversation as two men could have, except I was doing all the talking, Mr. Runk merely assenting and bobbing his head and agreeing to whatever I said. I think the only thing he said was, "Joseph, you are perfectly correct in what you have said, and whatever you say shall be done," and "You are perfectly right, and I will agree to everything. Everything shall be exactly as you want it, and you will not have any more cause to

find fault with me."

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Q. What was it you wanted him to do?

A. I wanted him to give more attention to his business and not be so nervous and jumping around so much. He was always excitable. It had been growing on him. I said, "I do not know what your outside arrangements are, but I can speak personally, and I find my time fully occupied attending to the business, and I do not see how you can do any more." When the conversation closed, it did not last over half an hour, I remember perfectly well, because it was the time I go to lunch. At half past one I go to lunch, and I took out my watch and said, "I am going to lunch, William. I will see you when I come back this afternoon." He said, "All right." I never saw Mr. Runk alive again.

Q. You came back to the store that afternoon?

A. I did about half past two o'clock and sent for Mr. Runk at three o'clock, as was our custom, not to continue the conversation, but simply to see him. That was all. He did not come back, and I waited until my time to go home, five o'clock, and they sent me word back that Mr. Runk had not returned.

Q. What was Runk's appearance and manner at this conversation

on Wednesday morning?

A. Just as it had been on Monday and Tuesday, perfectly vacant; blank.

Q. How did that compare with his ordinary appearance and manner previously?

A. Quite different. Mr. Runk was naturally a buoyant, happy disposition. He was a congenial man in every way.

Q. That was the last time you saw him alive?

A. Yes, sir.

Q. At the time you had this conversation with him were you aware of the drafts which had been made upon his contribution to the capital?

A. Absolutely not.

Q. Was anything said in reference to making an examination of the book- or the affairs of the firm?

A. No.

Q. Was anything said upon the subject of his drawing money from the firm?

A. Except Mr. Runk was in the habit of having money that I noticed put on memorandum, which I called his attention to and told him that I could not allow it; that I knew it had existed, never any great amount, but it was larger when I came home, and I told him that was not right. That if he wanted money he should come and ask for it, and if it was convenient to let him have it he should have it, but I did not want any money put on memorandum, and I wanted that money immediately charged against his account. His answer was that was perfectly correct and that it should be done.

Q. Was there any provision in the articles of partnership that

Mr. Runk was entitled to draw?

A. He was to draw so much a month and had a right to draw provided his capital was not interfered with or reduced below \$100,000; that must always remain intact.

Q. How much per month was he entitled to draw?

A. For his living expenses, I think, about \$700. Possibly six hundred.

Q. You discovered these draft on the capital after Mr. Runk's death?

A. I did.

Q. Did you ascertain at what time these drafts upon the capital began?

A. Only approximately. I should say they covered a period of two months.

Q. Within two months prior to his death?

A. Yes, sir.

By the Court:

Q. They commenced within two months of his death?

A. From all the evidence I could find, I suppose they went back probably as far as March or April. I have not the exact date, but it was all in that season.

By Mr. Bispham:

Q. You went away early in the summer, did you not?

A. On the 6th of July.

Q. Mr. Runk remained at home?

A. Yes, sir. Q. For what purpose?

A. He always remained at home to look after the business. He had entire charge of the business.

Q. The whole matter rested on him?

A. Yes, sir.

Q. Did you ever notice anything in Mr. Runk's condition in regard to the treatment of the employés in the establishment after your return home?

A. None whatever.

Q. Before you went away?

A. No, sir.

Q. Mr. Runk lived at St. David's?

A. That was w-ere he lived in the summer time.

Cross-examination.

By Mr. Johnson:

Q. A large part of his capital had been loaned to him by his aunt, Mrs. Barcroft?

A. So I understood.

Q. Under the articles, he was entitled to draw \$700 a month?

A. Six or seven hundred dollars I think it was.

Q. And about what style of living was he indulging in? He had a country place and kept horses and carriages?

A. Yes, sir.

Q. And had his children at college?

A. He had one son at college.

Q. About what were his monthly expenditures?

A. I do not know.

Q. You can give us an idea?

A. No; I have no idea.

Q. You visited at his house?

A. Yes, sir. 105

Q. You can give the jury no idea of the probable expense?

A. A very plain home. Very simple and very plain.

Q. Do you think his expenses were much less than seven or eight hundred dollars a month

A. I have no right to know anything about his expenses.

Q. You have no idea whatever?

A. No, sir.

Q. Have you any idea where he was going to pay \$20,000 a year insurance premiums?

A. I didn't know anything about it.

Q. If, therefore, in October, 1891, he was paying about \$12,000 of premiums and took on an additional load of eight or nine thousand dollars more, you know of no source from which he was going to get the revenue to pay that, do you?

A. I knew nothing about his expenditures for life insurance.

Q. How about these store orders? How much was the amount of the store orders you settled with Pierce after Runk's death?

A. They were not store orders. There was one order. The amount I forget. I did not settle with them. Mr. Runk's estate

settled it. I did not pay it.

Q. He says you paid it. He says he saw you. He was asked, "Did you have any conversation with Mr. Darlington about this order?

A. After the death; yes.

Q. What was the conversation?

A. He simply told me to send them in and he would fix my account.

Q. How did he know you had them?

A. I told him I had them.

Q. What amount did you tell him you had?

A. My bill had been running along for some time and I had not settled the bill for months, it was something about seventeen or eighteen hundred dollars."

Q. Do you recollect about that?

A. That is correct.

Q. You did have a talk with him?

A. I did not understand you.

Q. I thought you said the estate settled it?

A. It was settled by approval of the estate, and charged to Mr. Runk's personal account.

Q. What do you mean by that?

A. I was authorized by the counsel of the estate to charge this item against Mr. Runk's personal account.

Q. Who was the counsel of the personal estate?

A. Mr. Bispham.

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Q. Who is your counsel in this matter?

A. Mr. Dale.

Q. And he is specially representing you here in this fight?

A. In connection with the estate.

Q. At your request? The estate did not request Mr. Dale to be here?

A. The estate; yes, sir. Q. And not you?

A. I do not know. Mr. Dale has been my attorney from the very commencement when I came home from Europe—he was in this case.

Mr. BISPHAM: Mr. Dale is here at my request.

By Mr. Johnson:

Q. Do not let us have any adjectives about "vacant" or "dazed." or anything of that sort, but tell this jury anything that William M. Runk said to you that was not intelligently said. Tell us what the thing was that he said was not intelligent.

A. I cannot say that he told me anything but what was intelligent. It was more his manner. Everything he said, the words

were perfectly intelligent.

Q. His manner was that he was not very free with his explanatious? Is that so?

A. His manner was entirely unnatural.

Q. Have you ever seen a man before that had been found falsifying books?

A. No, sir.

Q. Was it an unnatural manner for a man who had been detected in that?

A. I had not detected him in that.

Q. He had been detected in having falsified the book, had he not?

A. Not to my knowledge then. I had no knowledge of that. Q. What are you referring to? I am referring to these conversations Saturday, Monday, Tuesday and Wednesday. Had he not been detected then?

A. No, sir; he had not.

Q. What did you mean by saying it had been found out in June by the bank or at the bank?

A. That he altered the bank balance.

Q. When was it found out by the bank? A. So far as I know, the end of June.

Q. So that the thing that Runk volunteered to you was something that the bank itself had found out? Is not that so?

A. That is so.

Q. And, therefore, when he came to make a disclosure to you he limited the amount of the disclosure to what had been actually found out by the bank itself antecedently, did he not?

A. Yes, sir. That is so.

Mr. Johnson requested the witness to produce the report of the expert on the accounts of the firm showing when these overdrafts were made.

107 Q. You know you charged up against him \$84,000, did you not?

A. \$86,000.

Q. Do you mean to say that the whole \$86,000 had been spent by

Runk between March, 1892, and his decease?

A. From all the evidence. I do not know when it was spent. All the evidence I had of checks went back to either March or April, or something like that. Possibly to the last of February. I had nothing to go by but the checks.

Q. Did the checks aggregate \$86,000 that went back?

A. Eighty-five or eighty-six thousand dollars I think. The checks went back to February.

Q. Did you know antecedently to that time?

A. We did not.

Q. Then you did not examine to see whether that was not a keeping up of an old thing?

A. We did not go antecedently to that.

Q. All you wanted to see was to find out what the aggregate was at the time of his death, did you not?

A. That was it.

Q. You made no effort to find out whether that did not commence antecedently to March, 1892, did you?

A. No.

Q. Because this falsification in the deposit had been repeated several times, had it not?

A. Several times during that season.

Q. Therefore, you do not want the jury to understand you as saying that you are prepared to say that it was only after March, 1892. that there was a commencement of the \$86,000 of withdrawals, but simply that you did not look to see whether there was an antecedent history of withdrawals?

A. I did not look, nor did I know anything about it.

Q. How did you learn that the bank had found out in June, 1892, that there had been a falsification of ten thousand dollars in the deposit?

A. The bank told me.

Q. Before Runk spoke to you?

A. Runk spoke to me first. Runk made a statement to me and I went to the bank and had it verified.

Q. Then what he told you was exactly correct?

A. Correct, except that he had altered it more than once.

Q. You found out from the bank there had been an alteration? A. I did.

Q. And then when you found out from the bank that he had altered it more than once, you told him that thing?

A. I did.

Q. And he looked a little dazed, and admitted that he had? Is that so? 108

A. He said he did not know that he had. He had forgotten all about it. He afterwards remembered it.

Q. You went along step by step, and as you found it out he would admit it?

A. He admitted it.

Q. When you found out some more he said, as in this case, well, he didn't know how it happened, or something of that sort?

A. That is the only thing I found out.

Q. Of course, while he had a nominal capital of \$100,000, or perhaps a little more, against which were carried these \$86,000, that was got at by carrying the stock at more than it could realize, was it not?

A. No; I do not understand what you mean by the word "real-

Q. "Realize" in realization at a time when the \$86,000 had been raised. Suppose you had said to him at any time, "There is but \$14,000 to your credit. We want to ascertain what your interest There is to your credit, by carrying \$640,000 worth of stock at that value, so much." Could you have obtained, or could he have obtained for his interest that \$640,000, or whatever the stock was carried at?

A. That depended entirely upon what kind of a settlement was

made. Q. You made a settlement under articles that obliged you to take no advantage of him, and, I take it therefore, you made as good a

settlement as he was entitled to, did you not, for him? A. I made a good settlement for him.

Q. So that when you came to make the best settlement you could for him with regard to his interest, those six hundred and forty-odd thousand dollars were worth less by about two hundred and ten thousand dollars than they were carried for to ascertain him to have any interest? Is not that so?

A. That is a way of stating it; yes, sir. Q. So that, although after you had charged up the \$86,000 there was something to his credit nominally, that was by carrying the stock at a higher value by thirty per cent. than was its fair value?

A. Not under ordinary circumstances. Under normal conditions

the stock was worth all that had been carried out.

Q. You were going to carry on that business again? A. Yes, sir.

Q. It was worth as much to you to take it as to anybody else?

A. It has another factor in it. Q. What was the other factor?

A. The other factor was that the estate of Mr. Runk was relieved immediately of all responsibility regarding any obligations of Dar-

lington, Runk & Co., which I immediately assumed.

Q. You were obliged to assume that responsibility anyhow. It was a general partnership and you were liable for the whole as well as the part, were you not? I want to give you the credit for paying for that stock which you were to carry and to use, its supposed fair,

full value. Assuming that you paid for it its fair, full value, and that these \$210,000 you clipped off from it were fairly clipped off, there was not really any valuation to his credit, that which appeared, after the \$86,000 was charged against it, was

there?

A. I cannot answer that way. Q. Answer it in your own way.

A. That stock was settled under the peculiar condition of affairs.

Q. How peculiar, excepting that you got it? What else was there You were under an obligation to take it in a way not to take advantage of him. How else was it peculiar?

A. The peculiarity was simply that the estate wanted a settlement and there were only two ways of selling out; either selling out at

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public sale, or for the surviving partner to take it, and had it been sold out at public sale it would not have been nearly as advantageous as if I took it.

Q. There was no way by which his interest could have realized anything like what stood nominally to its credit?

A. Not at forced sale.

Q. Some of this stock which you took thirty per cent. off had just been bought and not delivered; it was new fall stock?

A. It had all been delivered.

Q. Did you not take at thirty per cent. discount a great deal of stock that you had bought in Europe on that trip that you returned from on the 28th of September?

A. Yes, sir. But not a large amount in comparison to the bulk of

the stock.

Q. You were making all your fall purchases in Europe?

A Not by a great deal.

Q. About how much do you think of those \$600,000 was stock which had been bought in Europe by you on that trip for the fall business?

A. I can't say.

Q. You said he was running to the telephone; his manner had changed in that respect. Was he not running to the telephone to give directions to the stock brokers?

A. I do not know.

Q. You have heard of these five stock-broking accounts that he had, have you not?

A. Yes, sir.

Q. That would account for some pretty lively telephoning, would it not?

A. I think it would.

Q. And account for a man being a little nervous, too, would it not?

A. I think so.

Mr. Bispham produced statement called for by Mr. Johnson.

Redirect examination.

By Mr. BISPHAM:

Q. You have been cross-examined by Mr. Johnson on the subject of your settlement with the Runk estate. Tell me whether,

in your judgment as a business man, that was or was not the best settlement that could have been made for the interest of Mr. Runk's executors.

A. I think it was decidedly in favor of the estate.

Q. What was the alternative?

A. Public sale.

- Q. What, in your judgment as a man of business, would that have resulted in?
- A. It would not have brought within twenty per cent. of what I gave him. Or no other merchandise stock.

By the Court:

Q. Was it worth any more to you?

A. It was to me to carry on the business.

Q. Was it worth any more to you than what you paid for it?

A. Not a dollar. I did not think it was worth as much.

By Mr. BISPHAM:

Q. That settlement was made on February 1st, 1893?

A. I think so. Whatever that date is.

Q. At that time how much percentage of the fall stock had been worked off and sold?

A. I could hardly tell that.

ARTHUR B. HAMIL, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. You are now in the establishment of Mr. Darlington, are you not?

A. Yes, sir.

Q. In the employ of Mr. Darlington?

A. Yes, sir.

Q. You were in the employ of the firm of Darlington & Runk, were you not?

A. Yes, sir.

Q. When did you first go with them?

A. In October, 1888, I think.

Q. Whereabouts was your office or place where you did your work? On what floor of the building?

A. Third floor back. Q. What were your duties in a general way? A. Attending to the purchases and payments. Q. You had charge of the invoices, had you not?

A. I didn't have charge.

Q. What had you to do with them?

A. I examined the extensions. Q. What do you mean by that?

- A. When the bill would come in to see that the extensions were correct.
- 111 Q. You had charge of the merchandise ledger, had you
 - A. I made the entries on the ledger. I didn't have charge of it.

Q. Who had? A. Mr. McAvoy.

Q. You made the entries on the ledger?

A. Yes, sir.

Q. Under Mr. McAvoy's direction?

A. Yes, sir.

Q. What would you do after you had made up the average dates of payment for goods?

A. I would take them to Mr. Runk.

Q. What would Mr. Runk do?

A. If they were due he would give them to me and tell me to take the discount off and return them to him again with the amount, and he would send me to Mr. Farr and tell Mr. Farr to draw the checks. Mr. Farr would draw the checks and return the slips to me, and I left them in what we call a blank receipt book.

Q. Was that a receipt book or called a remittance book?
A. That was a blank receipt book.

Q. You were familiar with the way in which Mr. Runk used to draw checks which were to be used for the payment of bills of goods consigned?

A. Yes, sir; I was.

Q. You were aware afterwards of the overdrafts on Mr. Runk's capital? The fact that he had drawn money out and used it?

A. No, sir.

- Q. You knew that the checks which had been drawn were not sent?
- A. I knew from the fact that it was the custom to send checks to me to mail, and I have often seen them when I went down to the office.
- Q. You knew from your examination that the checks had not been sent?

A. Yes, sir.

Q. Did you make any estimate as to about what time that appro-

priation of moneys covered?

A. I didn't know anything about it when I first entered the office. About two years afterwards I was in a position to know then, and it had been carried on from that on, for the two years, but not of any consequence. He would draw checks and send them probably the following week or next day or so.

Q. How was it for a few months prior to his death?

A. It got quite large for a couple of months.

Q. What did it amount to roughly?

A. From \$70,000 to \$80,000.

Q. That is during the two months prior to his death this amount amounted to between \$70,000 and \$80,000?

A. Yes, sir.

Q. Prior to that time had there been any holding back of 112 this amount that you were able to discover?

A. There were enecks held back for two or three days or a week. Something like that. He would send checks out probably every day, but kept some back and sent some.

Q. It was in the summer of 1892 that it increased to that amount?

(Objected to as leading.)

Q. What was the aggregate of these checks during the summer of 1892 roughly?

A. I said between \$70,000 and \$80,000.

Cross-examination.

By Mr. Johnson:

Q. When did you ascertain that; before his death?

A. Before his death.

Q. How long before his death?

A. The checks had been held back for about two months before his death.

Q. Then you, the book-keeper of this concern, discovered two months before his death that he was holding back \$70,000 or \$80,000?

A. Oh, no, sir.

Q. How much did you discover?

A. At the time of his death it amounted to that, but he had commenced to hold it back in large amounts within two months.

Q. What amount did you discover in the two months before his death that he was holding back? How much did you then discover him to be holding back?

A. I didn't notice any at that time.

Q. When first did you notice he was holding any back?

A. He had been holding back off and on.

Q. I understood you to say that two months before his death you discovered that he was holding back checks to a large amount?

A. Yes, sir; before that they were small amounts.

Q. I want to know what amount two months before his death you discovered he was holding back?

A. I don't know what amount. I never noticed the amount. It didn't amount to anything. I should say \$5,000 or \$10,000.

Q. Not within two months before you did not discover the amount was more than \$5,000 or \$10,000?

A. No, sir.

Q. So that before his death you had not discovered that amounts had been held back to a greater amount than \$5,000 to \$10,000?

A. I should say about that. I never questioned the amount, because it was too small.

Q. That was all you knew before his death?

A. Yes, sir.

113 Q. You discovered about two months before his death he was holding back large amounts, did you?

A. He commenced to hold back large amounts two months before

his death.

Q. You made a discovery two months before his death that he was holding back large amounts; is that so?

A. He began to hold back large amounts within two months before his death.

Q. How large an amount did you then discover two months before his death he was holding back?

A. I couldn't state the amount that he held back before that.

Q. How did you know it was large? A. I do not quite understand you.

Q. Did you find out before Runk's death that he was holding back checks?

A. I did.

Q. Did you discover it two months before his death that he was holding back checks?

A. I might say I discovered two years before his death that he

was holding back checks.

Q. I thought you said two months before his death you found out he was holding back large amounts; that you thought it was small before, but two months before his death you found out it was

A. It commenced larger; yes sir.

Q. And you have drawn a comparison between a small and large amount. I want to know about how much it was you found two months before his death. What makes you think it was large?

By the COURT:

Q. Can you not approximate the amount?

A. No, sir. I know at the time he died there was about \$70,000 or \$80,000 held back.

By Mr. Johnson:

Q. You found that out after he was dead?

A. I did.

Q. Did you ever make an investigation in the books to find out when that \$70,000 or \$80,000 began and the times that it accrued?

A. I should say it had grown in the two months before his death. Q. How do you know that what was done two months before his

death had not been renewals of something that had been done earlier and carried on earlier? Did you make an investigation to see that fact?

A. I don't quite see it right.

Q. Was it you found out after his death it was \$70,000 or \$80,000?

A. I knew at the time. I knew when he died. Q. You knew before he died it was that?

A. Yes, sir.

Q. How long before his death had you found out it was \$70,000 or \$80,000?

A. It must have been about a week, because it was accruing every week.

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Q. You found out about a week before his death that it had got to be \$70,000 or \$80,000, did you?

A. Yes, sir.

Q. Whom did you tell that to?

A. Mr. Darlington.

Q. A week before Runk's death?

A. No, sir; I didn't tell it before Runk's death.

By the COURT:

Q. Whom did you tell it to before Runk's death when you discovered it?

A. I didn't tell it to anybody.

By Mr. Johnson:

Q. Why did you keep it to yourself?

A. I didn't question anything Mr. Runk did. I didn't have anything to do with the sending of checks. I merely mailed the checks.

Q. In what way did you find it out?

A. I knew from my pay statement I had in my drawer they amounted to that much, and they agreed with the checks Mr. Runk held.

Q. Did you know he was holding the checks?

A. Yes, sir.

Q. Had he told you that?

- A. Yes, sir. Q. Then did he tell you all along when he was holding checks back?
 - A. He could not keep it a secret from me. I had to know.

Q. Then you knew all along what he was doing?

A. Yes, sir.

Q. Did you keep any memorandum of it? A. Nothing, only my remittance book.

Q. Then you ought to be able to tell us what it was two months before his death. You say you were keeping the memorandum of it. Keeping this memorandum, you can give us an idea what it was two months before his death?

A. I can't say what it was.

O. You had been keeping that memorandum for two years, had you?

A. No, sir. I didn't keep any memorandum. I don't know what you mean by memorandum.

Q. What did you keep? You know that there were checks being held back, did you?

A. Yes, sir.

Q. You knew from time to time the amounts of these checks that he held back necessarily. You knew the amount 115 of each check, did you not?

A. If I looked at my book I did.

Q. You know that Jones', Smith's and Brown's checks were being held back?

A. Yes, sir.

Q. And you knew how much these checks were?

A. Yes, sir.

Q. Then you knew from time to time how much was being held back, did you not?

A. I never committed the amount to memory.

Q. How long before his death did you first begin to find that he was doing this thing; two years before his death?

A. Just in a small way it was being done then.

Q. And kept getting more and more as time accrued, it kept rolling up?

A. Yes, sir.

Q. When did you first find out, or did you, that he had also been altering the deposit balance in the bank book?

A. I didn't know anything about that.

Q. Then you do not know of the different methods he adopted of concealing what he was doing with the firm's cash?

A. No, sir.

Q. You just happened to know of these things and that they commenced two years before his death, and that they were much bigger within a few months of his death?

A. Yes, sir.

By the COURT:

Q. Did you know that there was anything irregular or improper in his holding back these checks?

A. No, sir. I didn't know anything about it. I didn't know

that there was anything wrong in it.

By Mr. Johnson:

Q. You were book-keeper, were you not?

A. Yes. sir.

Q. You filled the amounts of the checks, did you not?

A. No, sir.

Q. Did you fill the amount on the stubs?

A. No, sir.

Q. What had you to do with the check book?

A. I had nothing to do with the check book.

Q. Then how did you know what checks were drawn?

A. Simply because I made the amount up for the check to be drawn and that was returned to me.

Q. Who would fill up the check; Runk?

116 A. Mr. Farr.

Q. Then you would make up the amount that the check was to be drawn for?

A. Yes, sir.

Q. And Mr. Farr would report to you that the check had been drawn up for that amount?

A. Yes, sir.

Q. And you would charge it against your cash, would you not, as though it had been drawn out by the customer?

A. Yes, sir.

Q. Do you want this jury to understand that you, as a book-keeper did not know that when \$70,000 or \$80,000 of checks that were charged up as paid to the creditors of the firm were not drawn that that was not irregular and improper?

A. As far as I was concerned, they were paid. I had nothing to

do with mailing them.

Q. You knew they were not mailed?

A. Yes, sir; I knew that.

Q. Yet they appeared on the books as though they had been?

A. Yes, sir. 15—142

Q. Do you want this jury to understand that you, as a bookkeeper, of how many years' experience?

A. I did not have any experience as a book-keeper.

Q. How long had you been in the business? A. I was employed as a clerk for four years.

Q. Do you want the jury to understand you as saying that you did not know that it was irregular and improper, when you had given the amounts of these checks and had charged them as drawn, and that they had not been drawn, but had been held back by Mr. Runk, they appearing to have been drawn, to the tune of seventy or eighty thousand dollars, that you did not think that was improper? A. Yes, sir.

Adjourned until Wednesday, April 3, 1895, at 10 a.m.

U. S. C. C.—Butler, J.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Deceased,

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

WEDNESDAY, April 3, 1895.

Mr. Bispham, Mr. Dale, Mr. Barnes, Mr. Dickson, for plaintiff; Mr. Johnson and Mr. Sherman, for defendant.

ARTHUR B. HAMILL recalled.

By Mr. BISPHAM:

Q. You said in your examination-in-chief that after you handed the bills for goods purchased by the firm to Mr. Runk, he would give them to you and tell you to take the discount off and return them to him again with the amount, and he would send you to Mr. Farr and tell Mr. Farr to draw the checks, and Mr. Farr would draw the checks and return the slips to you, and you left them in what you called the bank receipt book. What became of the slips?

A. They were held in the office for reference.

Q. Did they remain in your possession?

A. Yes, sir.

Q. Did those slips show the total bills for which Mr. Runk was to draw checks from time to time?

A. Yes, sir.

Q. In the ordinary course of business would Mr. Runk send the checks to you enclosed in letters that were mailed to the persons from whom you bought the goods?

A. It was Mr. Runk's custom to send me checks, or send for me

to get them.

Q. Then, if you did not get the checks of Mr. Runk you would know by your slips how much ought to be coming to you in the way of checks?

A. Yes, sir.

Q. That is the way you made the calculation?

A. Yes, sir.

Q. How old are you?

A. Twenty-seven.

Q. You were not head book-keeper or chief book-keeper at any part of that time?

A. I don't call myself a book-keeper. I was merely a clerk.

Q. In what capacity had you been employed in the first place

A. To examine the extension of bills and general office work.

Mr. Bispham offers in evidence on behalf of plaintiff the deposition of George C. Thomas, taken by defendant.

(Objected to. Offer withdrawn.)

EVALINE RUNK, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. Where are you residing now?

A. On Eighteenth street. Q. Is that your house?

A. It is Mrs. Barcroft's house.

Q. Mrs. Barcroft is a relation of your late husband, is she not? A. Yes, sir; his aunt.

Q. When were you married to Mr. Runk? 118 A. In June, 1886.

Q. Mr. Runk at that time was a widower, I think?

A. Yes, sir.

Q. Had he any children by his first wife?

A. Three living.

Q. Who were they? A. Louis, Marshal H. and Elizabeth C.

Q. Where were you living after your marriage?

- A. Part of the time on Eighteenth street and part of the time at St. David's.
 - Q. Who owned the house at St. David's?

A. Mr. Runk.

Q. Mr. Runk was in business at the time you married him. was he?

A. Yes, sir.

Q. And remained so up to the time of his death?

A. Yes, sir.

Q. What were Mr. Runk's usual habits as to the hours he devoted to business during the last two years of his life? What time did he go in in the morning and what time did he come out in the afternoon?

A. He would go in about half past seven in the morning, and his return would be uncertain. He would sometimes come home at half past five. This was his usual hour for coming home, sometimes later, and very occasionally he would come home earlier than that.

Q. Did he come into town in the evenings?

A. Nearly every evening through the month of May up until the 1st of July.

Q. For what purpose?

A. For the purpose of attending to his various church engagements, Sunday-school engagements, &c.

Q. He was a member of what church?

A. He was very active in the work of the Church of the Holy Apostles.

Q. That is an Episcopal church?

A. Yes, sir. Q. Where is it?

A. Twenty-first and Christian, I think.

Q. I think you said he was active in the work of the Sunday school, &c.?

A. Verv.

Q. And he would come in town nearly every evening?

A. Nearly every evening.

Q. What time would be come out again at night?

A. On the half-past nine train.

Q. When you married Mr. Runk, and for a few years after your marriage, what was Mr. Runk's disposition? 119

A. He was very genial, very cheerful, light-hearted. Q. Was he a man of gloomy or of sanguine temperament?

A. Very sanguine temperament.

Q. What was his disposition in regard to amiability or irritability, or anything of that kind?

A. He was a very amiable man, and very even-tempered.

Q. Did you notice any change in Mr. Runk in these respects in regard to his temperament in the summer of 1892?

A. He became very excitable and irritable and nervous, unduly

excited by trifles.

Q. In what way did he show his nervousness and excitability? A. By an almost incessant motion, jerking, twitching, and he would become very angry at very small things.

Q. Where and on what occasions did you observe this motion or

twitching of which you have spoken?

A. It was almost incessant. It seemed to be an impossibility for him to remain quiet.

Q. Did he sleep well?

A. He slept very heavily. It was a dead sleep. He would seem to be so exhausted at the end of the day that it was impossible for him to stay awake.

Q. Are you referring to the summer of 1892?

A. Yes, only.

Q. How did he use to sleep before that time?

 A. Very comfortably and lightly, easily.
 Q. What was the difference in his sleeping in the summer of 1892 and in the previous years?

A. He would be very easily aroused; a touch would arose him, and during the summer of 1892 it would be almost an impossibility; he would lie perfectly dead and heavy, and it was almost impossible for me to arouse him.

Q. What time did you have dinner in the evening?

A. Half past six.

Q. Would Mr. Runk in the summer of 1892 go to sleep before dinner?

A. No, we had dinner almost as soon as he came home. He came home very late in the summer.

Q. After dinner would he go to sleep?

A. After dinner he would throw himself down on a lounge that was on the porch and go to sleep almost immediately, and would sleep there until I had to arouse him to go upstairs.

Q. You say Mr. Runk was restless. Was there any motion that

you noticed in his hands?

A. No, no particular motion; just a constant moving. His fingers and hands would move all the time.

Q. How when he was at meals? Did you notice then?

A. No, because I sat at one end of the table and he at the other. But my sister spoke of the constant motion of his feet at the table, that it made her nervous.

Q. Who is your sister?

A. Mrs. Brown.

Q. She is not here?

A. No.

Q. Did you notice any change in the summer of 1892 in the expression of Mr. Runk's countenance?

(Objected to as leading. Objection sustained.)

Q. State everything in regard to Mr. Runk's appearance and manner in 1892 that attracted your attention.

A. Mr. Runk's face became very strained, had a tense, intense look that was very different from his former expression—a set look.

Q. Can you recall any instances of Mr. Runk showing the irrita-

bility of which you have spoken in the summer of 1892?

A. I can recall one instance that struck me as being a very unnecessary display of irritability, when the subject was brought up of the man at Pittsburg, I think, who was strung up by his sons. It was during the riot at Pittsburg, and Mr. Runk became violently excited on the subject, said he thought the man had been persecuted, and thumped on the pavement and became very, very violently excited, and unnecessarily so, as he had never shown any interest in the man before, and we had visitors that evening and I was very much mortified at his unnecessary display of irritability.

Q. Where did you go the latter part of the summer of 1892?

A. We were up at the Water Gap about two or three days.

Q. Did anything occur there that attracted your attention from what Mr. Runk did or said?

A. No.

Q. When did you return from the Water Gap?

A. We went on Monday and came home Friday, I think.

Q. Where were Mr. Runk's two sons in the summer of 1892? A. They were both abroad.

Q. When did they return?

A. I think the second week of September, or the third week, I am

not sure. I think the third week.

Q. Mr. Runk's death is stated to have occurred on the 5th of October, 1892. What was Mr. Runk's manner of conduct during the week immediately preceding his death?

A. He was feeling very unwell at the time; he had had a very severe sore throat and was very weak and miserable. He seemed very nervous and preoccupied, and quite unlike himself in every

way.

Q. In what way?

A. He seemed indifferent to all his surroundings, and he was very I saw very little of him; he came home late in the evening. and went away early in the morning.

Q. Coming down to the 5th of October, 1892, do you 121 remember what time Mr. Runk went into town on that

morning?

A. The usual time, half past seven.

Q. When did he return?

A. He came out in the 2.45 train, I think, in the afternoon, or the 3.15, I can't remember which.

Q. Do you happen to recall what sort of a day it was?

A. It was a very cold day. It snowed at intervals. It was a very unusual day for that time of the year.

Q. State what occurred after Mr. Runk returned on that

afternoon.

A. He came in the house from the station and came immediately upstairs. He always spoke to me when he came in, but I didn't know he was in the house until he came to the head of the stairs. Then he walked right in the room where I was busy with the seamstress, with his hat on his head, a thing he had never done in his life before, I think, and when he came in I noticed his manner was very excited and his face very pale. He walked up to me, and I said to him, "Have you come to go driving?" told me, "No," he had some work to do that he had come home to do.

Q. Did he say what sort of work it was?

A. Writing. Then he went into the other room, and I followed him. He went in his dressing-room. When I got in there he was standing on a chair feeling in the back part of the shelf of the closet. I asked him what he wanted. He didn't answer me, and his daughter came in the room just then and she stood looking at him, and he turned around to her and said, "What are you looking at? Do you think I am an elephant?" Then he went on with his work in the closet.

Q. How old was his daughter?

A. Fourteen. Then I said to him, "Is it anything I can do for you?" He told me, "No," and I asked him if he wanted any

lunch, and he said, "No," and then I went back to my work. Mr. Runk went downstairs, and in a little time after that I went down to see if I could get him anything, and I found him writing. I spoke to him, asked him if he wanted anything, and he said, " No."

Q. That was before dinner, was it?

A. That was before dinner. After a while the little children came home, and I took them downstairs.

Q. What little children were they?

A. Our own little children. So they came downstairs, because their father was very fond of seeing them whenever he was home, and he turned around and said, "Take the children upstairs, their noise distresses me." I took them upstairs, although he had spoken to the baby and was very sweet to her, very kind to her, loving, and then I took the children upstairs again and I didn't see Mr. Runk until just when the dinner bell rang again.

Q. The little children were how many?

122 A. Three. Then he came upstairs and I saw him for a minute then before dinner.

Q. Did you see him at dinner?

A. Yes, sir.

Q. Describe his manner, and what was said or done.

A. Mr. Runk didn't speak during dinner to any one but to me, and not to me unless I addressed him.

Q. Who were at the dinner table

A. Our two sons, my sister, Mrs. Odell and myself, and Bessie, his daughter. He ate no dinner, although he had everything passed to him-he ate no dinner himself and paid no attention to anything going on around him, unless I addressed him, when he looked up and answered me. He seemed to be perfectly absorbed in writing on the table-cloth and looking down. He paid no attention to anything; excepting in the middle of the dinner, when he heard the clock strike, and he jumped up and ran in the other room and did something to the clock and came back again. I saw him very preoccupied, and thought I would talk to him and divert his attention, but he only spoke when I spoke to him.

Q. What time did he dine?

A. About half past six. Q. About how long did the dinner last? A. Three-quarters of an hour, perhaps.

Q. After dinner what did he do? A. He went upstairs to the nursery with me, as was his habit, to bid the little children good night. He bade them good night I noticed very lovingly, and afterwards talked to me, and then I went in my own room with baby and I never saw him again.

Q. Did you go into town with Mr. Runk that morning?

A. I went in town afterwards. Q. Did you see Mr. Runk?

A. Yes, at the store.
Q. What was his manner and appearance?

A. He was very busy, but he seemed very quiet and very polite.

Q. About what time was that?

A. About 11 o'clock. Half past ten.

Q. Was anybody in Mr. Runk's room at the store when you were there?

-. Mr. Farr.

Q. Look at the paper which I now hand you and state whether you recognize that signature.

A. Yes, sir; it is Mr. Runk's.

(Mr. Bispham reads said letter as follows:)

Darlington, Runk & Co.

G. C. T.

October 4, 1894.

Dictated by W. M. R.

PHILADELPHIA, October 4, 1892.

George C. Thomas, Esq.

MY DEAR MR. THOMAS: Your communication duly received giving me the list of the committees on Christmas music and Christmas entertainments, and the same will be

read on Friday evening.

I also note what you say in regard to Miss Cobb, and I will add that I had a conversation with her mother on the subject on Sunday, and she told me that her daughter had only agreed to take the class for a few Sundays, and could not think of accepting for the long period requested by Mrs. Kirk.

The request in regard to flowers will also have careful attention,

and I have received your card to go with them.

The matter of service on Friday evening, October 21st, I will see

Dr. Cooper about, in accordance with your request.

I do not know what to say to you in regard to the news in the morning's paper concerning J. B. M. It is certainly a sad ending, and, as we all know, the young man has gone his own way, regardless of all the influence and interest which you and Mrs. Thomas, as well as others, have tried to have over him.

Very sincerely yours,

WM. M. RUNK.

- Q. Do you know who was alluded to by the initals "J. B. M."?
- A. Yes, sir; Mr. Thomas' nephew, young Mr. Moorehead.

Q. Do you know how he died? A. Yes, sir; he shot himself.

Q. How many days before this?

A. Monday, I think.

Q. This was written October 4, which was Tuesday?

A. He shot himself Monday.

Q. October 4 was a Tuesday, was it?

A. Yes, sir.

Q. And it was the next day that your husband's death occurred?

A. Yes, sir.

Q. Do you happen to know whether Mr. Runk was well acquainted with Mr. Moorehead?

A. He wasn't well acquainted with him, but he had seen him

frequently at Mr. Thomas' house and had known him for a long while.

Q. Did this young man have anything to do with the Sunday school?

A. Oh, no.

Q. Did you have any conversation with Mr. Runk on the morning of October 5, before he went to town?

A. No particular conversation.

Q. Was anything said then or when you saw him at the store on

the subject of the children going to school?

A. He had spoken to me before, before breakfast. We were upstairs talking-he had seen the doctor the day before, and we had just entered our son, Marshal, at a preparatory school for college, and Mr. Runk was very dissatisfied with him, and he related the conversation of the night before, and told me that he intended

to make it a point through the entire winter of going in there 124 once a week to see that Marshal was properly instructed and prepared—that he wasn't at all satisfied with the report he had heard of the school. He had worried a good deal, and he hadn't felt satisfied from the beginning.

Q. Did Mr. Runk say anything as to what he was going to do in

town that day?

A. No, I don't remember that he did. I had asked him what

time he would be home, and he said he couldn't tell me.

Q. From your knowledge of Mr. Runk, and from your observation of his manner in the summer of 1892, which you have described, and from the facts which you have detailed that happened on the 5th of October, 1892, tell me what your judgment is as to Mr. Runk's mental condition at the time of his death?

(Objected to. Objection overruled. Exception by defendant.)

A. I think Mr. Runk's mind was unquestionably unbalanced at the time of his death.

Cross-examined.

By Mr. JOHNSON:

Q. I want you now to say whether you have told this jury everything on which you rest that opinion. Have you now stated to this jury all you saw and all you know on which you rest that opinion?

A. I have stated all that I can clearly account for. I do remember many incidents and many little things, but I can't remember

distinctly enough to tell.

Q. I want you to state everything on which you have rested that opinion, so that the jury may form their opinion. If there is any-

thing else state it?

A. The entire change in Mr. Runk's disposition, the entire change in his appearance, his general breaking down in every way. It seemed to me it was simply a crisis; the end was just simply a culmination of what had gone before.

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Q. You heard after his death of certain things he had done in his lifetime, did you not?

A. I did.

Q. And you knew nothing at all of them during his lifetime?

Q. Do you not think those things would have affected him?

A. I think if he had realized them certainly they would.

By the Court:

Q. It might be interesting to know whether you formed this opinion of his mental condition before his death?

A. I noticed many things strange.

Q. You have given us your judgment of his mental condition based on what you observed. Did you form the opinion which you have expressed that his mind was unbalanced before his death or afterwards?

A. Afterwards.

Q. Then the act of committing suicide had something to do with the conclusion you reached?

A. It had.

ELLA ODELL, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

Q. You are Mrs. Runk's sister, I believe?

A. Yes, sir.

Q. Where do you live?

A. Bridgeport, Connecticut. Q. You knew Mr. Runk?

A. Very well.
Q. Were you acquainted with him before his marriage to your sister?

A. Always.

Q. What was Mr. Runk's character, and disposition, and manner before 1892?

A. He was always very pleasant, always, and very bright.

Q. Was there anything else you noticed that you can describe about his character or manner, as to his temper or disposition?

A. He was naturally of a nervous temperament.

Q. How about his disposition?

A. He was always very even-tempered.

Q. Did you see Mr. Runk in the summer of 1892? A. No; I saw him the spring before.

Q. Did you see him in September or October, 1892?

A. I was there.

Q. When did you go to Mr. Runk's house? A. About four or five days before his death.

Q. Then you saw Mr. Runk? A. Yes, sir.

Q. Did you notice any change in his manner, and, if so, describe it.

A. Yes, sir; he was extreme- irritable; irritable over very little things.

Q. Can you give us any instances of that?

A. Yes, sir; a very little affair excited him very much. About Tuesday morning at breakfast he got in a terrible wrath because the grapes were not cold. They had been standing in the diningroom over night, and that was something. He would always take things as they would come without saying anything; without making any special fuss over it.

Q. What else did you notice, if anything?

A. Well, in that way, that he was very excited over very little things.

Q. Did you see him on the day of his death, October 5, 1892?

A. Yes, sir.

Q. Did you see him at breakfast?

A. Yes, sir.

126 Q. What was his manner then?

A. As usual.

Q. Did you see him after he came out in the afternoon?

A. I was the first to see him.

P. Describe what you noticed when you saw him?

A. He startled me as he came in the room. I was sitting opposite the hall, and his wife was a little at one side, though she didn't see him as soon as I did, and he was very white and his eyes seemed to be just like glass, and I was going to exclaim to him, "Oh, what is the matter?" but I knew he didn't like anything said, and so on second thought I said nothing.

Q. That was when he came in?

A. That was when he came into the room.

Q. Describe the house. There is a hall, the entrance?

A. We were on the second floor.

Q. This was in the hall on the second floor, was it?

A. No; the room we were sitting in was three rooms back, and we had to go through one room to get in the other, in that way; it was in the wing. He came upstairs with his hat on, which startled me to commence with, for as many times and as often as I saw him I had never seen him before come in this way; he was very particular about little things, and he came with his hat and overcoat on, flustered in the room in this kind of a way, and he came right in, and his wife when he got in the room said, "Why are you home?" and he said, "Yes; I have some writing to do; I have some work to do." She said, "What is it?" and he said, "Some writing."

Q. What else happened?

A. Then he said something, then turned around and went up to the room, and his wife followed him.

Q. When did you next see him on that afternoon?

A. He was down in the lower hall.

Q. What happened then that you observed?

A. I didn't go down. I started to go down and found he was busy writing, and then I didn't go down.

Q. The lower hall was used as a sitting-room?

A. Yes, sir; it was a hall room. It was a regular room in a country house. As you enter from the hall there was a square room.

Q. When that afternoon did you next see Mr. Runk?

- A. After seeing him down there? It was at the dinner table. Q. Describe his appearance and manner at the dinner table.
- A. At the dinner table he seemed to be very much—he acted very strange and didn't eat anything at the dinner table, and everything that was passed to him he helped himself to, but ate nothing, and all the time at the table he was sort of making figures and one thing and another on the tablecloth with his fork, and he couldn't keep himself still. He was all in motion and twitching all the time. He had been for several days as though his nerves were completely unstrung.

Q. Did you see him after dinner? 127

A. Oh, yes. Q. Where, or in what part of the house?

A. Down in the parlor. I was sitting there. Q. What was his manner and appearance there?

A. Then he just walked around the room, and he didn't have a word to say to any one.

Q. How long did he remain in the parlor?

A. Oh, about five minutes; that is all. He walked up and down about twice.

Q. Did you see him again after that?

A. No; he put his hat on and went out the door. Q. Did you see him again that evening at all?

A. Not until we brought him in. Q. You never saw him alive?

A. Not after that; no.

Q. From your knowledge of Mr. Runk and your observation of his conduct and manner as you have detailed, what is your judgment as to Mr. Runk's mental condition at the time of his death?

(Objected to. Objection overruled. Exception by defendant.)

A. I think he was insane at his death. I think his mind had become thoroughly unbalanced.

Cross-examined.

By Mr. Johnson:

Q. When do you say you noticed any change in him?

A. There was a great change from the time of my seeing him in the spring until I went there in the fall.

Q. When did you first notice any change?

A. From the time I got there.

Q. When was that?

A. I arrived the Thursday before.

Q. When first in his life did you notice any change?

A. I don't know. I thought for several years he had been more or less nervous.

Q. How many years?

A. I don't know as I can put down just the years, but I know several years.

Q. I want your best idea of how many years you thought he was

nervous.

A. He had always been more or less nervous.

Q. Nervousness was always one of his characteristics?

A. No: not in the way he was of late. That was entirely different. His nervousness-for the last few days he couldn't sit still.

(). When first did you notice any marked change in his nervousness?

A. The change was very great in the fall.

128 Q. When first did you notice any marked change in his nervousness?

A. I hadn't seen him for two or three years to be in the house

with him.

Q. Then practically you had not seen him for two or three years before going there four or five days before his death?

A. I was in Philadelphia, but I wasn't staying in his house.

Q. Then you did not pay any attention to him?

A. Not particularly.

Q. Then the first time you really paid any attention to any change was this period of four or five days before his death?

A. And then I could see a very great change.

Q. That is the first time any change struck you, is it?

A. Of his extreme nervousness; yes, sir.

Q. I am not confining you to any particular thing. Was there any other?

A. He couldn't sit still a minute. He was all of a twitch; seemed as though he had no control over himself.

Q. Had he not always a nervous habit of twitching his hands?

A. No.

Q. That you first noticed when you came there the last visit, did you?

A. Well, he had a movement all his life.

Q. What other change did you first notice then? A. He was very far from well; he had a bad cold.

Q. What else besides nervousness and having a bad cold did you notice? You have expressed an opinion here, and I want to know on what you rest it. Tell me all the changes that you noticed, so that the jury may form a judgment.

A. He struck me instantly as if things had reached a climax; as

if his nervousness had gone beyond him.

Q. You thought he was very nervous then, did you?
A. That it had gone beyond his control.

Q. You thought then he was very nervous. What other changes did you notice? Give us all you noticed, so that we may have our own judgment.

(No answer.)

By the Court:

Q. Can you not name anything else?

A. I cannot.

By Mr. Johnson:

Q. Then we may take it that what you thought was his nervousness had gone beyond his control?

A. Yes, sir; as if he was in that condition that he was entirely

unaccountable for it.

Q. I suppose you expressed that opinion then? You told your sister that you thought he was unaccountable for his conduct, did you?

129 A. Certainly.

Q. You told your sister then before his death?

A. No, not before his death. Do you suppose I would make a remark like that to my sister?

Q. Did you make any comment?

A. I am not in the habit of making comments.

Q. Then you did not make any comment on his appearance, did you?

A. To my sister?
Q. Or to any one?

A. I did to another sister. I said he seemed very far from well.

Q. That is what you said?

A. Yes, sir.

- Q. Then the comment which you made was that he seemed very far from well?
- A. Very far from well, and that he was very much worse than I had ever seen him.

Q. Did you have any talk with him?

A. Nothing more than what I have stated.

Q. At any time during your visit there this last time?

A. I talked sociably.

Q. Tell us a single remark he made that was not strictly pertinent to the question put to him, or that indicated in any way that he did not thoroughly understand what was asked him.

A. I saw very little of him.

Q. But you saw enough of him to express an opinion, and therefore I want to see what you did see when you saw him. Tell us one earthly thing that that man said which was not most intelligent in response to any question that was put.

(No answer.)

By the Court:

Q. Do you remember anything?

A. I don't remember anything special. I saw so little of him. He left early in the morning and then he would come in just a few minutes before dinner.

By Mr. Johnson:

Q. I might understand how seeing so little of him you would not have an opinion at all; but if you had an opinion you must have seen enough of him to have formed it, and I now want you to give the jury the benefit of all you saw on which you rest that opinion, little or much. Tell me if there was one single question that any human being addressed to him to which he did not intelligently respond.

A. I am trying to think of something, but the events afterwards

put everything at the time out of my mind.

Q. Take your own time and think of it.

(No answer.)

130 By the Court:

Q. You do not recall anything?A. I don't recall anything special.

By Mr. Johnson:

Q. I understood you to tell Mr. Bispham that he was of a cheerful disposition prior to 1892?

A. Very.

Q. Then although prior to that time he had embezzled the moneys of the city mission, he still, after he had done that, until 1892, remained of a cheerful disposition?

A. Perfectly. There wasn't a particle, to my knowledge, of change

came to him in any way from what he had been for years.

Q. In what way did this nervousness of which you speak manifest itself other than in the ways you have stated?

A. Well, when I say the man had no control over himself.

Q. Tell, us what you mean by that.

A. He couldn't sit still one single moment; he seemed as though every single limb was in a twitch.

Q. That is a little exaggerated, is it not? He did not get up from the dinner table, excepting once when the clock struck.

A. He would sit at the dinner table and his arms and hands would go. I sat next to him and it was misery, because he was so constantly in motion; his arms were going and his feet.

Q. What would he talk about at the dinner table?

A. He hadn't as much to say as usual while I was there.

Q. Did he talk?

A. The last afternoon at dinner he said nothing.

Q. Did he not talk to his wife?

A. She asked him one or two questions, and that was all.
Q. What was she talking about, and what did he say?
A. I couldn't say now. She only asked him one question.

Q. He responded, did he not?

A. Oh, he said something, but I really didn't pay attention to what he said then. She asked him once if he didn't want any dinner, and he said he wanted nothing.

R. After dinner you say he was down in the parlor?

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A. Just a minute. Walked through back and forth once or twice.

Q. Whom did he speak to there?

A. He spoke to me. Q. What did he say?

A. He said, "Marshal will mail your letter."

Q. Had you given him a letter?

A. I had a letter written to go to my husband, and Marshal was going to take it down to the station to mail.

Q. Mr. Runk told you after dinner in the parlor that Marshal

had mailed your letter?

A. No; he would mail it. It laid there.

Q. What else did he say?

A. He didn't make any remark whatever. That was the only thing that was said.

Q. You did not know of any of these things that you heard after

his death?

A. Not a word.

Q. You do not think those would have made him very nervous?

A. Of course if I had known of it I might have thought so, but I knew nothing at all whatever.

Q. If you had known that he had been embezzling the funds of the church and of the city mission would not that have accounted for the nervousness which you saw?

A. I knew nothing about it.

Q. Suppose you had would not that have accounted for all the nervousness you saw?

A. No, I think not.

Q. You do not think he would have been nervous?

A. It would make most anybody nervous, but I don't think it was that. I think his temperament was such, he had applied himself so closely to business, and his health had given away to such an extent, that he couldn't control himself longer.

Q. You knew no reason whatever why he should be nervous at

that time, did you?

A. I knew nothing about his personal affairs.

Q. And you have told us all you now recall that he said and did on which you rest the opinion you have expressed, have you not?

A. Yes, sir.

Re-examined.

By Mr. BISPHAM:

Q. After dinner where did Mrs. Runk go?
A. Up with the baby.

Q. You went in the parlor?

A. I did.

Q. And Mr. Runk you say came in the parlor? A. He went upstairs. He followed her upstairs.

Q. And then came down in the parlor?

A. Yes, sir.

Q. And then went out?

A. Yes, sir.

Q. Did he go out of the house?

A. Yes, sir.

Q. How long after that was it that you heard of him shooting himself?

A. Marshal had left the house for the depot I think about five minutes afterwards; he had left the house, and then he had

been gone but two or three minutes, when they came in for me. He had been gone but a few minutes, and they came in for me, and of course my first thought was that there was some bad news for me. I never thought anything had happened.

Q. Then were you informed that Mr. Runk had shot himself?

A. Yes, sir; and then I said, "That can't be, send for the doctor."

Q. When did you next see Mrs. Runk?

A. She heard a little commotion dowstairs, and she rushed down.

Tom Tingle, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

Q. You were in the employ of Darlington, Runk & Co.?

A. Yes, sir.

Q. And you are still in the employ of Joseph G. Darlington?

A. Yes, sir.

Q. What was your position with Darlington, Runk & Co.?

A. I am foreign buyer for Joseph G. Darlington & Co. at the present time.

Q. How long have you been such?

A. I have been in the employ of the firm about twelve years. Q. You knew Mr. Runk, of course?

A. Perfectly well.

Q. You saw him frequently? A. Frequently, certainly.

Q. About how often did you see him? Was it daily?

A. I should think almost hourly, when he was in business. Q. Were you familiar with his manner and appearance?

A. Certainly.

Q. Did you see him during the summer of 1892?

A. Well, not so much. I was away in Europe a great portion of May and June.

Q. When did you return from Europe?

A. About the middle of July.

Q. Did you see Mr. Runk after you returned?

A. Certainly.

Q. Did you notice any change in his appearance and manner?

A. Yes, I did, certainly.

Q. What was it? Describe it.
A. I would call it a state of unrest, unquiet, uneasy and fidgety way.

Q. How did that show itself?

A. By the simple fact that you couldn't get his attention to any given subject for one minute. Not for a minute, so far as my recollection goes.

133 Cross-examined.

By Mr. Johnson:

Q. Give me one instance of where you tried to get his attention and could not.

A. As I would tell the jury, the tale is quite plain and quite easily understood. In the early portion of September we had some goods in the custom-house. In the morning I told Mr. Runk that those goods were required. That would be, perhaps, ten o'clock in the morning. During the day a customer comes and inquires for the same goods, or a portion of those goods that were in the custom-house. In the afternoon I went to him and said, "Mr. Runk, I suppose those goods are being taken out of the custom-house." He had forgotten all about it.

Q. Give another instance of where you could not get his atten-

tion. Give me all the instances you recall.

A. It may have been a day before, or a few days afterwards, he had sent for me, and he had even then forgotten that he had sent for me.

Q. Are those all the instances?

A. Yes, sir; those two facts are all that I can recall.

Q. Have you given all the instances in which you could not get his attention?

A. Yes, sir. That was in September, before he died.

J. Alfred Miller, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. You were in the employ of Darlington, Runk & Co. in 1892, were you not?

A. Yes, sir.

Q. And had been for how long?

A. Six years at that time. Q. In what capacity?

A. Credit clerk.

Q. Of course you knew Mr. Runk very well?

A. Yes, sir.

Q. You saw him frequently?

A. Every day.

Q. Did you see Mr. Runk on the 5th of October, 1892?

A. Yes, sir.

Q. What time of the day?

A. About two o'clock. Either half past one or two.

Q. What did he say?

A. He came in the office and made some remark that I didn't

I said, "Did you say you were not coming back?" catch. He said. "No, no, I will be back."

Q. That was the day of his death? A. Yes, sir.

Q. Did you notice his appearance and manner? If so, describe it.

A. His face had a drawn and white look, and I noticed a twitching around the muscles of the eyes, or the eyelids, I don't know which.

Q. Was there anything else about his appearance and manner that you noticed?

A. No. sir.

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Cross-examined.

By Mr. Johnson:

Q. Was that the first time his face ever had a white look and a worn look about the eyes?

A. No, sir.

Q. When did you first find his face having a white look?
A. That summer.

Q. During the whole summer?

A. Yes, sir.

Q. And that was the time when he was running the store in the absence of Mr. Darlington, was it not?

A. Yes, sir.

Q. So that you noticed his face with this white look while he was running the store in sole charge of the whole of that large business?

A. Not to the marked extent I did on the last day.

Q. Still it had the same white and worn look, and during the whole of that time he was running this great business?

A. Yes, sir.

Re-examined.

By Mr. BISPHAM:

Q. Mr. Darlington used to go abroad in the summer, did he not?

A. Yes, sir.

Q. And Mr. Runk would remain behind in charge of the business?

A. Yes, sir.

Q. That was the usual thing?

A. Yes, sir.

Simon Porter, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. What is your business?

A. I am a canvasser for an insurance company. Q. What particular companies do you represent? A. At the present time I represent the Berkshire.

Q. Did you know Mr. Runk?

A. I did.

Q. How many years have you known him?

A. About six years. 135

Q. Did you have any conversation with him in 1890 on the subject of insurance?

A. To the best of my recollection I had.

Q. Had you any conversation prior to that?

A. Yes, sir.
Q. What companies were you representing?

A. Prior to 1890 I represented the Mutual Life, and I was soliciting then for insurance in the Mutual Life.

Q. Did you place any insurance for him in the Mutual Life at

that time?

A. I did not. Q. Why not?

A. He was not ready to take any.

Q. In 1890 did you have any conversation with him?

A. Yes, sir; I asked him if he was not ready to increase his line of insurance.

Q. What did he say?

A. He said he was not ready.

Q. What else was stated?

A. Nothing particular; nothing special. I merely called his attention to the fact that he had promised to give me some insurance.

Q. When was it that he made this promise to give you some in-

surance?

A. It was, as near as I can recollect, about 1889, or previous to

Q. Did Mr. Runk finally take any insurance of you?

A. He did.

Q. When? A. In 1892.

Q. State what that promise Mr. Runk made to you was.

A. He promised to insure his life with me when he was ready. I was acquainted with him, and on account of friendship he said he was willing to give me some insurance, if he ever was ready to take any more.

Q. It was in January, 1892, I think, that this increase was taken?

A. Yes, sir.

Q. Did you go to Mr. Runk then, or did he come to you?

A. I went to Mr. Runk. Q. What passed then?

A. After two interviews, or three, I took his application for a policy in the Berkshire.

Q. What did he say when you first spoke to him in January, 1892, about taking out insurance?

A. He had about made up his mind to increase his line.

Q. Did he take it at once?

A. No; I had three interviews before he signed the application.

Q. Was anything else said at that time? Was there any reference to other companies?

A. He said he was taking some insurance in some other companies.

Q. Did you refer to the promise which he had made?

A. Yes, sir.

Q. What did he say about that?

A. He said he had promised to insure with me, and was about fulfilling his promise.

Cross-examined.

By Mr. Johnson:

R. Did you ever place any insurance for him before this January, 1892?

A. No, sir; not on him.

Q. You tried to do so in 1890?

A. Yes, sir.

Q. You urged on him in every way, I suppose, that he should take it?

A. Certainly.

Q. What reason did he give for not taking any more?

- A. He was not ready to increase his line of insurance; he had all he wanted.
- Q. What did he say by not being ready? That he had not the money, or what?

A. No, he didn't say that particularly. He said he thought he had enough insurance at the present time.

Q. He told you then in 1890 that he thought he had enough insurance, and positively refused to take more?

A. At that time he thought he had enough.

Q. In January, 1892, or thereabouts, when you stopped to see him, he told you he had concluded to increase his line, did he?

A. Yes, sir.

Q. And did he tell you he had increased it beyond what it was in 1890 by the Mutual policies?

A. No. That statement came out in his application. He was

applying for some at that time.

- Q. Did he give you in January, 1892, any reason why he had about made up his mind to do what in 1890 he had refused to do, increase his line?
 - A. Not to my recollection.

Re-examined.

By Mr. BISPHAM:

Q. Did you have any interview with him in 1891?

A. Yes, sir. I saw him, I suppose, every month, and I often would ask him if he was not ready. He had given me the names of some of his friends who had insured. I would often go and see

him and often ask him if he was not ready to increase his insurance.

Mr. Bispham offers in evidence on behalf of plaintiff the letter heretofore identified by Mrs. Evaline Runk. (See page 221.)

Plaintiff closes. Testimony closed.

(The following is a copy of the account referred to in the testimony of William G. Hopper on page 99 of the testimony, and offered in evidence on behalf of defendant:)

Wm. M. Runk.

1888.		1888.
	To loan on \$4 M. L.	May 12. By C 22 92
pr	Navg. R. R. loan &	June 13. " " 22 92
	\$1 M. P. C. & St.	" 4 L. Navg. coup's
	L., 76 5,500	
Man. 10		92 July 13. " C 22 92
May 12.		
June 13.		02 Aug. 10 20 08
July 13.		32 NOV. 20 08 /n
Aug. 13.		68 Dec. 31. " "12 31 22 92
Nov. 13.		10 Apr. 9
Dec. 13.	" "	92 10. " " 5,500 00
1889.		
Jan. 12.	" "	92
Feb. 11.		92
M'ch 13.		92
Apr. 9.		92
мрт. о.	10 1 12	
	5,775	80 5,775 80
1889.	5,110	= 1889.
	To loan on 4 M. L.	Oct. 7. By C 113 83
дрі. 11.	Navg. R. R. loan	9. " P. C. & St. L. & 7's
	&\$1 M. P. C. & St.	coup. del'd.
July 8.	1110. 101 0 111000	99 Jan. 4. By C
Aug. 7.		23 23 24 24 25 25 25 25 25 25 25 25 25 25 25 25 25
Sept. 7.		92 July 31. " " 83 42
Oct. 7.		92 Aug. 1. " 1 P. C. & St. L.
Dec. 7.	" " 61 d's at 6 % 55	
1890.		29. " C. % int 27 50
Feb. 6.		00 Nov. 18. " C 83 42
Apr. 11.	" " " 64 " " 58	66 Dec. 8. " " 5,528 41
		Del'd \$4 L. Navg. gold
138		loan \$1 M. P. C. &
Inly 11	83	42 St. L. 7's.
		50
		00
29.	" C. % P. C. & St. L.	50
		50
Nov. 7.		
Dec. 8.	" int	41
	0.000	0.000 57
	6,062	57 6,062 57

Wm. M. Runk-No. 2.

189	1.			18	91.			
July	-		4,293			By 300 Rdg. 141	4,331	25
	8.	" 100 Atch, 331	3,325		13.	" 100 St. Paul 65	6,487	
		" 100 St. Paul 65	6,512		16.	" 100 St. Paul 643.	6,462	
	10.	" 100 " " 64 d	462		17.	" 100 St. Paul 644.	6,462	
	15.	" 100 " " 641.	6,437		28.	" 200 Atch. 31.14.	6,325	
	16.	" 100 " " 64].	6,437		-0.	" 3 d's' int. 100 b. 5	1	
	20.	" 100 " " 64}.	6,437		30.	" 100 St. Paul 62½.	6,237	
	-	" 100 " " 64	6,412		31.	" bal		
		" 100 Atch. 321	3,262		01.	1941	1,334	00
	31.	" int	71					
				-				
			49,652	90			49,652	90
Y 1	01	To bot	10.012	=	-			
July			13,345	06 Ang	. 3.	By 100 St. Paul 62}.	6,212	50
Aug.		"30 Penna. rec'd.				" 100 St. Paul 628.	6,250	
	19.	" 100 Pac. pfd. 663.			8.	" C	600	
		" 100 " " 66g.			13.	100 Pac. Did. 614.	6,112	50
	01	" 200 Un. Pac. 38.	21,100		14.	" 100 Pac, pfd, 60%.	6,062	50
	21.	" 100 Pac. pfd. 663.	6,650			" 100 Pac, pfd, 612.	6,175	
	-	" 100 Un. Pac. 36§.	3,681	25	31.	" bal	13,388	75
	31.	" int	24	94			,	
			44,801	05			11.00	-
139			44,801	20			44,801	25
Aug.	31.	To bal	13,388	75 Sep.	3	By 300 Un. Pa. 423	19 656	95
Sep.	1.	" 100 Pac. com. 271	2,737	50	8.	" 300 Rdg. 173	12,656 $5,306$	
Lef.	4.	" 100 Rdg. 17 g	1,762		0,	" 100 Pac. com. 261		
		" 200 Rdg. 172	3,512			" 100 rac. com. 26g	2,637	50
		" 100 Pac. com. 261	2,662		16.	" 100 " 27.	2,687	
		" 100 Pac. com. 261	2,625	00	18.		5,531	25
	8.	" 200 Penna. 533			18.	" 100 Pac. com. 28	0.00	**
	9.	4 200 D.J. 19	10,775			b. 3	2,787	
	21.	" 300 Rdg. 18	5,418		0.3	" 200 Penna. 541.	10,825	
	21.	" 300 N. Anm. 173.	5,362	90	21.	" 200 St. Paul 738.	14,700	
		" 200 N. Anm. 171.	3,525		22.	" 200 Pac. com. 30	6,050	
		" 200 St. Paul 723.	14,500 (" 200 N. Amn. 183	3,725	
	00	" 200 Pac. com. 29	5,825			100 N. Amn 19	1,887	50
0	22.	" 300 Rdg. 2113	6,562		23.	" 200 Pac. com. 301	6,075	00
Sept.	wil.	" 400 Pac. com. 30	12,050	00	24.	" 100 Pac. com. 297	2,975	00
		" 100 Rdg. 21}	2,131	25	28.	" 100 St. Paul 74	7,387	50
	24.	" 100 Pac. com. 29%	2,950			" 100 Pac. com. 291	2,975	00
		" 100 St. Paul 74].	7,437		30.	" bal	21,882	30
	28.	" 100 Pac. com. 291	2,925 (00				
140			Wm. M.	Runk-1	Vo. 2			
189	1							
Sept.		To 200 N Amp 101	2 950 4		91.			
Sept.	40.	To 200 N. Amn. 19	3,850 (00				
	30.	" int. Aug	8 1	00				
	00.	Hit	78 1	151				
			110,088	55			110,088	55
63	00	m		=				
Sept.	30.	To bal	21,882	30 Oct.	5.	By 200 N. Amn. 19.	3,775	00
Oct.	31.	" int	96 7	70	31.	" bal	18,204	00
		-	-	-				_
			21,979	00			21,979	00
Oct	21	To bal	10 001 4	00 N-	10	D. 100 D.	2	
Nov.	10	55 100 Dag com 023	18,204 (Nov.	13.	By 100 Pac. com. 261	2,612	50
MOV.		" 100 Pac. com. 253	2,087	00	30,	4 bal	18,267	36
	30.	" int	88 3	30				
		-	90 0=0 4	00			00	-
			20,879 8	50			20,879	86
		=				•		-

A. HOWARD RITTER, EXECUTOR, ETC., VS.

					193
Nov. 30. To bal	18,267 36	Dec.	11.	By 100 Pac. com. 24}	
Dec. 31. "int	86 34		31.	b. 3	2,412 50
			01.	Data	10,041 20
	18,353 70	400			18,353 70
Dec. 31. To bal	15 041 90	189		By 200 Rdg. 2116	4,200 00
1892.	10,041 20	Jan.	14.	" 200 Rdg. 21	4,187 50
Jan. 12. "100 L. N. A., &c.,			29.	" 200 Rdg. 21 " 100 N. Amn. 16	1,625 00
29}	2,937 50		30.	" bal	10,537 94
" 18 % com's on above	6 25				
21. " 100 N. Amn. 15k	1,600 00				
30. "int	65 49				
	20,550 44				20,550 44
Ion 20 Tobal	10 527 04	M'h	7.	" 300 St. Paul 793.	23,775 00
Jan. 30. To bal	10,537 94 23,700 00	194 11	8.	" 200 Rdg. 28	5,587 50
7. " 100 Pac. pfd. 674.	6,787 50			" 100 Pac. pfd. 681. By 100 St. Paul 771.	6.800 00
141				By 100 St. Paul 774.	7,712 50
M'ch 7. To 100 St. Paul 80c.	8,012 50		11.	100 Rdg. 27 % 100 Rdg. 27 %	7,712 50 2,750 00 2,731 25
8. "100 Rdg. 27 7 "100 "27 1	2,750 00			" 100 St. Faul 77%.	7,725 00
9. "100 St. Paul 78}.	2,756 25		31.	" bal	11,166 17
14. " 100 Rdg, 28‡	7,837 50 2,881 25				
" 100 " 284	2.856 25				
" int	128 23				
	68,247 42				68,247 42
	W W 7	0t N	· 0		
	Wm. M. 1				
1892. Wah 21 Ta bal	#11 100 17	189	2.	Du oach	\$500 00
M'ch 31. To bal	088 19	Apr.	11.	By cash	5,000 00
" 69 L. V. 58‡	4,027 88		12.	" 100 N. Amn. 141 " 100 " " 143	1,412 50
20. " 200 " " 60	12,025 00		14.	" 100 " " 14g	1,425 00
" 100 Rdg, 30 " 100 " 29]	2 956 25		18.	" 100 L. N. A. & C.	1,420 00
21. " 100 L. Valley 58.	5.812 50			254	2,531 25
" 100 Rdg, 29	2.906 25		21.	" 100 Rdg. 29}	2,918 75
" 100 " 28½ 27. " 100 Penna. 56¾	2,856 25 5,650 00		25.	" 100 Rdg. 29} " 100 L. Valley 58§	2,918 75 5,862 50
29. " 100 L. Valley 58.	5,812 50		26.	" 100 Pac. com. 213	2,162 50
30. "int	77 02		20.	" bal	32,552 94
	57,284 19				57,284 19
					E 000 EA
Apr. 30. To bal May 3. "100 Pac. pfd. 59%.	32,552 94 5,950 00		2.	By 100 L. Valley 58‡	5,862 50 3,018 75
May 3. "100 Pac. pfd. 59%. 13. "100 " "57	5,712 50		19.	" 100 Pac. pfd. 563	5,662 50
" 100 " " 573.	5,787 50		27.	" 100 Rdg, 304	3,043 75
	5,637 50		31.	" div'd 100 Penna. By bal	150 00 49.112 32
142					, 02
May 19. To 100 Pac. pfd. 56	5,612 50				
90 11 100 11 11 593	5 207 50				
20. "100 " " 533.	5,387 50				
20. "100 " " 533.	5,387 50 209 38				00.010.00
20. "100 " " 534. 31. "int	5,387 50 209 38 66,849 82		19		66,849 82
20. "100 " "53\\\\ 31. "int	5,387 50 209 38 66,849 82	189		By 100 L. Valley 611	6.112 50
20. "100 " "53\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	5,387 50 209 38 66,849 82 49,112 32 6,087 50	189 June	1.	By 100 L. Valley 614 4 100 Pac. pfd. 53.	6,112 50 5,287 50
20. "100 " 533. 31. "int	5,387 50 209 38 66,849 82 49,112 32 6,087 50	189 June		¹ 100 Pac. pfd. 53.	6,112 50 5,287 50

7.	" 100 Rdg. 294	2,981	25		8.	66	c'k	1 500	00
	100 L. Valley 604	6.062	50		0.	64	50 Rdg. to No.	1,500	00
	" 50 Rdg. 29	161,500	00				3 06		
8.	100 201	2,931	25		9.	4.6	-73- E	440	63
10	" 15 " 29 ₁₆	440	63		10.		100 Rdg, 29k	9 056	25
10. 15.	" 100 St. Paul 179.	7,912	50		13.		HUU St. Pant SOR	8 050	00
16.	" 100 Pac. pfd. 55%.	5,600	50			44	100 Pac. pfd. 55	5,525	
10.	" 100 Rdg. 30	6,087 3,006	95		14. 15.	44	100 Pac. pfd. 56	5,625	
20.	" 100 L. Valley 603 " 100 Rdg. 30 " 100 St. Paul 823	8,250	00		16.			3,031	25
21.	100 Kdg, 293	2.981	25		20.	46	Penna. 55 b 100 St. Paul 83	35,550	
27.	" 100 Pac. 56	5,675			23.	44	100 Pac. 3 pfd.	8,287	50
		-,					564	5 627	50
					30.	44	bal	59,109	73
		110 0 10							
		113,840						122,362	86
		-							
		Wm	Par	ık-No	9				
		· · · · · · · · · · · · · · · · · · ·	Actes	in -140	. 4.				
1892.	m 100 01 m 11	113,840	45	189	92.			122,362	86
June 29.	To 100 St. Paul 828.	8,275						,	00
30.	" int	247	41						
		100 900	00						_
143		122,362						122,362	86
June 30.	To bal	59.109	78	July	1	R	15 Pdg dolld		_
July 14.			50	July	11.		15 Rdg. del'd. 100 St. Paul 82].	0.010	
19.	" c'k	53	75		14.	84	100 Rdg 30-7	8,212	50
30.	" c'k " int	270	30		19.	6.6	100 St. Paul 821 100 Rdg. 3076 dvd. 386 L. V 100 Pac. pfd. 56 100 " 576	3,037 241	
					25.	8.6	100 Pac. pfd. 56.	5,612	
					29.	66	100 " " 57%.	5,775	
					30.	6.6	bal	42,117	53
		64,996	00						_
		04,990	28					64,996	28
July 30.	To bal	42,117	53	Aug.	1.	Rv	100 Pac. pfd. 58}.	5 010	=
Aug. 10.	" 100 St. Paul 824	8,287	50	reag.	2.		100 Rdo 2011	5,812 $3,062$	
	" 100 Pac. pfd. 57\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	8,287 5,750	00		11.		200 1800 3019	6,062	
11.	" 200 Rdg. 301 3 d's"						HIREST Pant 821	0 910	50
10	int	6,040			23.	4.6	100 Rdg, 29\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	2,931	25
12.	" 200 Rdg. 301	6,037				4.6	100 " 2915	2,987	50
	"100 " 2915 "100 " 293	3,000			24.	**	100 Pac. pfd. 56%.	5,650	00
	" 100 Col. Coal 33.	2,981 3,312			or	44	100 Pac, pfd. 56\$. 100 Col. Coal 343	3,456	25
	" 100 Pac. pfd. 57.	5,712	50		25.	•••	100 Pac. pid. 561		
15.	" 100 Pac pfd 561	5,637	50		29.	4.6	b. 3 100 Rdg. 28 §	5,600	00
19.		0 010	75		30.	4.6	100 Pac, pfd. 56.	2,887 5,587	50
25.	" 16 % com's 100 C.	,			31.	1.6	bal	45,524	
0.0	" 16 Kdg. 295 Coal " 100 Rdg. 291	6	25					10,044	10
26.	100 Rdg. 291	2,931	25						
91	"100 " 2813	2,875	00						
31.	Int	266	09					*	
		97,874	19						_
1892.		-	-	189	9			97,874	13
Aug. 31.	To bal	45,524	13	Sep.	8	Be	100 Pac, pfd. 553.	5.505	00
144		,,,,,,,		op.	26.	By	100 St. Paul 70	7 897	50
						11	100 St. Paul 79 100 Rdg. 28§	7,887 2,831	95
Sep. 2.	To 100 Pac. pfd. 55.	5,512	50			6.6	100 Rdg. 281	2,881	25
20.	" 100 St. Paul 79}. " 100 St. Paul " int	7,937	50					9 019	50
30.	" int Paul	7,737	50		30.	46	bal	44,901	46
	" int	227	33						
		66,938	06						_
								66,938	96
Sep. 30.	To bal	44,901	46	Sen	30	Br	bal. exr. ac	44.064	40
1	8-142	,	20	~ la	30.	Ly	Dan CAL MC	44,901	46

Wm. M. Runk-No. 3.

1892. June 8. 9. 13.	To 50 Rdg. No. 2 %. "100 Rdg. 291 "100 St. Paul 79 "int	2,918 75 7,912 50 47	13.	By 100 Rdg. 294 " 100 St. Paul 794.	2,943 9 7,962 5
	" e'k	74 53 10,906 25			10,906 2
	To 200 L. Val. 611.	12,250 00	July 1.	. By 50 Rdg. del'd.	
July 30.	" int			. " bal	
	=	12,339 83		- 1	12,339 8
	To bal			By bal	12,405 6
		12, 495 64			12,405 6
Aug. 31.	To bal	12,405 64	Aug. 31.	By bal. exr. %	12,405 6
	A. Howard Ritter,	Executor	of Est. of W	Vm. M. Runk, Dec'd.	
1892.			1892.		
Sep. 30.	To bal. (No. 2 %)	44,901 46	6 Oct. 5.	. By 100 St. Paul 78	7,787 5
Aug. 31.	" bal. (No. 3 %)	12,405 6	4 15. 24.		514 5
145			Sep. 7.		16 8
1893.	((\$0 D		26.	" 100 Rdg. 29	2,893 7
May 31.	" \$3 Penna. se'p extra dvd. 2 % & Pa.		Nov. 11.	. " 100 L. V. 58	$5,050 \ 0$ $5,787 \ 5$ $45 \ 0$
Nov. 6.	" int	1,122 1			150 0
			19	. " " 386 "	289 5
			Feb. 4		50 0
			20	. " c'k \$1 M. Rdg.	
				del'd	600 0
				" 500 L. V. 55‡ " 86 L. V. 54‡	27,562 5 4,708 5
			May 31.	. " dvd. 30 Penna	37 5
			June 12	. " \$30 Penna. se'p.	
			Aug. 10	. " 30 Penna. 50	$ \begin{array}{c} 29 & 9 \\ 14,962 & 2 \end{array} $
			Nov. 6	. " bal	1,409 9
		58,429 23	-		58,429 2
Nov 6	To bal	1,409 96	Nov. 13	. By \$185 Rdg. 1st se'p	
	" int			39	71 9
				" \$421 75 Rdg. 2d	110.0
				sc'p 27 " \$239 16 Rdg. 3d	113 3
				se'p 18	42 7
			Dec. 11	. " bal	1,189 1
		1,417 1	2		1,417 1
Dec. 11.	To bal	1,189 1	1		

146

U. S. C. C.—Butler, J.

A. Howard Ritter, Executor of the Estate of William M. Runk, Deceased,

vs.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

THURSDAY, April 4, 1895.

Charge of Court.

Gentlemen of the Jury: This case, as has been said to you, is one of a great deal of importance, one which deserves your very careful attention, and one which can only be decided justly by understanding the law that governs it, and by adhering strictly to the evidence.

As frequently occurs, a great deal of testimony has been heard, and several questions have been raised, which will be found, in the view the court now takes of the case, to be entirely unimportant. I only regret that we could not know at the outset how the case would present itself to our minds at the close, so that we might have avoided the unnecessary expenditure of time and unnecessary taxing of your strength and patience, and devoted ourselves to what now turns out to be the consideration on which the case must be decided.

Counsel for plaintiff have presented to the court several points on which we are asked to charge, for the purpose of getting their view of the law before you. The plaintiff's first, second, and third points are disaffirmed. The fourth is also disaffirmed, for the reasons given in answering the defendant's first point, of which I will speak directly.

The fifth point reads as follows:

"If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self-destruction will not of itself prevent recovery upon the policies."

This is affirmed. I will say, however, that we must understand what is meant and intended by the term "moral character of his act." It is a point which has been used by the courts, and is correctly inserted in the term; but it is a term which might be mis-

understood.

We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrong-fulness of what he was about to do, as a sane man would—then he

is to be regarded by you as sane. Otherwise he is not.

147 The defendant's first point reads as follows:

"There can be no recovery by the estate of a dead man of

the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind."

This point is affirmed.

The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed. raise the same question, and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court of last resort, nor, so far as has been discovered.

by any other, in this country or in England.

When the points were presented I said in your presence that in the absence of authority, or of custom on the part of insurance companies, or in the business of insuring, bearing on the subject, I would feel little hesitation in holding that suicide by the insured. while in a sane condition of mind, constitutes a defence to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting; and there is no evidence before the court of any custom in the business of

insurance bearing on this subject.

I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the changes of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based, and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intententionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others. A different construction of the policy would seem to make it a contract to pay the insurance immediately if the insured commits suicide; thus offering an inducement to commit this act. If the insured lives out the ordinary term of life the time of payment may be very remote, and therefore the inducement the commit suicide is very great if payment follows this event. Of course no insurer would intentionally enter into such a contract; it would be destructive of its interests. His premiums are calculated, and his prospect of gain based on the insured's chances of life under ordinary circumstances; and if the latter may render the insurance payable immediately by committing suicide, the former is completely at his mercy. If, however, an insurer should enter into such a contract, the law would declare it void, because of its violation of public policy. It would seem, in effect, to be a contract to pay money for the commission of suicide.

If suicide results from insanity it is not, in legal contem-148 plation, the intentional act of the insured. What constitutes insanity, in the sense in which we are using the term, has been described to you, and need not be repeated. If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject, otherwise he was not.

Here the insured committed suicide, and, as the evidence shows, did it for the purpose, as expressed in his communication to the executor of his will, as well as in letters written to his aunt and his partner, of enabling the executor to recover on the policies, and use the money to pay his obligations. I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit.

The only question, therefore, for consideration is this question of sanity. There is nothing else in the case. That he committed suicide, and committed it with a view to the collection of this money from the insurance companies and having it applied to the payment of his obligations, is not controverted, and not controvertible. It is shown by his own declaration, possibly not verbal, but written. The only question, therefore, is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not, as I have described, properly comprehend and understand the character and consequences of the act he was about to commit.

In the absence of evidence on the subject he must be presumed to have been sane. The presumption of sanity is not overthrown by the act of committing suicide. Suicide may be used as evidence of insanity, but standing alone it is not sufficient to establish it. It is sometimes thoughtlessly said, if a man commits a high crime or takes his life, that he was insane, he was crazy. The fact that a man commits a high crime is not evidence of insanity, and the fact that he takes his life does not of itself overthrow the presumption of sanity. There must be something more than this.

Therefore we start with the presumption of sanity in the defendant's favor, and the burden of showing insanity on the plaintiff.

You have heard the evidence on the subject and the comments of counsel respecting it, and from this you must determine how the question should be decided. I believe the wife and sister alone expressed an opinion that his mind was "unbalanced." . Whether either of them formed this opinion before his death I am uncertain. The wife said she did not. If the opinion is based on the fact alone that he committed suicide it is of no value. If it is based on this fact and his previous conduct, condition or conversation, it may and should be considered; its value still is for you.

These witnesses, together with two or three others, and probably more, you will remember, testified to his conversation, his conduct. his nervousness, the change in his appearance, and so on, shortly You must judge in how far this testimony tends

to show an insane condition of mind, such as I have described. 149 Might or might not the natural worry and distress occasioned by his unfortunate circumstances and the contemplation of self-destruction as a means of relief, account for his conduct and

appearance, without the existence of such insanity?

On the other hand, the defendant has called your attention on this subject to the fact that he conducted the business of his firm during his partner's absence and up to within a very short time of his death; and you have seen how methodically he prepared for his end, the letters he wrote, the instructions prepared for his executor, and so on.

Now, from all the evidence on the subject (and your attention has been very fully called to it by counsel, and there need be no

repetition of it), you must determine the question of sanity.

While I thus submit the question, and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong. It may be sufficient; that is a question entirely for you.

If you find him to have been insane, as I have described, your verdict will be for the plaintiff. Otherwise it will be for the de-

fendant.

There is nothing more that I need say. I can render you no further assistance. I will repeat, you must be very careful to guard your minds against the influence of sympathy or prejudice. Each of the parties is entitled to equal consideration at your hands. If you are not guided and controlled by the law as stated by the court, and the evidence as heard here, you will do great wrong to the parties and wrong to yourselves.

(Counsel for plaintiff excepts to the disaffirmance of the first,

second and third points submitted on behalf of plaintiff;

Also to the disaffirmance of the fourth point submitted on behalf of plaintiff, and to the answer to defendant's first point;

Also to the answer of the court affirming the fifth point submitted on behalf of plaintiff;

Also to that part of the charge where the court says:

"I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

Also to that part of the charge of the court saying that suicide standing alone is not sufficient to establish insanity, and if the opinion is based on that fact alone it is of no value;

Also to that part of the charge where the court says:

"While I thus submit the question, and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

The points submitted on behalf of plaintiff are as follows:

1. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon with the intention of de-

frauding the company defendant issuing the same.

2. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide.

3. The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defence in law to the plaintiff's right to recover the amount due upon the said policies.

4. The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies.

Terry's case, 15 Wall., 586.

5. If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self-destruction will not of itself prevent recovery upon the policies.

JOHN HAMPTON BARNES. RICHARD C. DALE. GEORGE TUCKER BISPHAM.

The points submitted on behalf of defendant are as follows:

1. There can be no recovery by the estate of a dead man, of the amount of policies of insurance upon his life, if he takes his own

life designedly, whilst of sound mind.

2. If you find that Runk committed suicide when he was of sound mind, being morally and mentally conscious of the act he was about to commit, of its consequences, and of its nature, with the deliberate intent to secure to his estate and to his creditors, the amount of the policies sued upon, there can be no recovery.

3. If you find that Runk obtained the policies of insurance sued upon at a time when he was insolvent and an embezzler, with the intent thereby to secure, in case of his death, from the plaintiff, the fund with which to pay those to whom he was indebted, and whose property he had embezzled; that he subsequently committed suicide, whilst of sound mind, with the deliberate intent to carry out this scheme, there can be no recovery.

4. The defendant is entitled to set off the loss occasioned by the failure of Runk to keep his agreement not to die by his own hand within two years of the date thereof. The amount of this loss can-

not be less than that of the policies sued upon.

And thereupon, the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion and answer of the said court, and inasmuch as the said charge and opinion and answers so excepted to do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made

and provided. And thereupon the aforesaid judge at the request of the said counsel for the plaintiff did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 22d day of April, 1895.

WM. BUTLER, J.

Endorsed: No. 51. October term, 1892. In the circuit court of the United States for the eastern district of Pennsylvania. Bill of exceptions. A. Howard Ritter, executor, etc., vs. The Mutual Life Insurance Company of New York. Filed April 23, 1895. Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

A. Howard Ritter, Executor of the Estate of William Runk, Deceased,

V8.

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK.

October Sessions, 1892. No. 51.

Assignments of Error.

The plaintiff assigns the following for error:

1. The admission of the evidence of Ralph F. Culinan contained

in the following offer:

Mr. Johnson: "I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the city mission in his hands as treasurer."

(Objected to on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

The Court: "This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court will have to hear it, and reserve for after consideration what weight it should have or whether it should have any. We may be asked to rule it out, and if so, we will consider it."

2. The admission of the evidence of William G. Hopper contained

in the following offer:

Mr. Johnson: "I propose to prove that this witness is a creditor of the estate to the amount of \$7,756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely."

152 3. The refusal of the court to affirm plaintiff's first point,

which point was as follows:

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon, with the intention of defrauding the company defendant issuing the same." 4. The refusal of the court to affirm plaintiff's second point, which

point was as follows:

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

5. The refusal of the court to affirm plaintiff's third point, which

point was as follows:

"The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defence in law to the plaintiff's right to recover the amount due upon the said policies."

6. The refusal of the court to affirm plaintiff's fourth point, which

point was as follows:

"The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies."

And the answer thereto as follows:

"The fourth point is also disaffirmed for the reason given in answering the defendant's first int of which I will speak directly."

7. The answer to plaintiff ifth point, which point and answer

are as follows:

"If one whose life is insured, intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self-destruction will not of itself prevent recovery upon the policies."

This is affirmed. I will say, however, that we must understand what is meant and intended by the term "moral character of his act." It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be mis-

understood.

We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others, in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not.

8. The affirmance by the court of the defendant's first point and the answer to such point which point and answer are as follows:

"There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind."

"This point is affirmed."

The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court of last resort, nor, so far as has been discovered, by any other, in this country or in England.

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When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defence to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based, and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them his act would be a defence to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others.

9. The learned court erred in charging the jury as follows:

"I therefore charge you that if he was in a sane condition of mind at the time as I have described, able to understand the moral character and consequences of his act, his suicide is a defence to this suit."

10. The learned court erred in charging the jury as follows:

"If the opinion is based on the fact alone that he committed suicide, it is of no value."

11. The learned court erred in charging the jury as follows:

"While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

JOHN HAMPTON BARNES. RICHARD C. DALE. GEO. TUCKER BISPHAM.

154 Bond.

Know all men by these presents, that we, A. Howard Ritter, executor estate of W. M. Runk, deceased, as principal, and American Surety Company of New York as sureties, are held and firmly bound unto the Mutual Life Insurance Company of New York in the full and just sum of five hundred (500) dollars, to be paid to the said The Mutual Life Insurance — of New York, its certain attor ney, executors, administrators, or assigns: to which payment, wel

and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this - day of April, in the year

of our Lord one thousand eight hundred and ninety-five.

Whereas, lately, at a session of the circuit court of the United States, eastern district of Pennsylvania, in a suit depending in said court, between A. Howard Ritter, executor of the estate of W. M. Runk, deceased, versus The Mutual Life Insurance Company of New York, a judgment was rendered against the said A. Howard Ritter, executor, &c., and the said A. Howard Ritter, executor, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Mutual Life Insurance Company of New York citing and admonishing it to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days.

Now, the condition of the above obligation is such, that if the said A. Howard Ritter, executor estate of W. M. Runk, deceased, shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obliga-

tion to be void; else to remain in full force and virtue.

Sealed and delivered in presence of-

HENRY L. FOX.

SEAL.

SEAL.

Attest:

A. HOWARD RITTER, Executor. AMERICAN SURETY CO. OF NEW YORK,

By SAMUEL T. FREEMAN,

Vice-President pro Tem.

HENRY L. FOX,
Ass't Secretary pro Tem.

Approved by— WM. BUTLER, JR.

155 Endorsed: No. 51. October session, 1892, C. C. U. S., E. D. of Pa. A. Howard Ritter, executor, &c., vs. The Mutual Life Insurance Company of New York. Bonds surwrit of error. Filed April 31, 1895. Samuel Bell, clerk.

United States of America, Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of A. Howard Ritter, executor, &c., vs. The Mutual Life Insurance Company of New York, No. 51, October sessions, 1892, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

[SEAL.]

SAMUEL BELL, Clerk of C. C.

156 In the United States Circuit Court of Appeals, Third Circuit.

And afterwards, to wit, on the 30th day of September, A. D. 1895, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. M. W. Acheson and Hon. George M. Dallas, circuit judges, and Hon. Leonard E. Wales, district judge, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 2nd day of December, A. D. 1895, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, file the following opinion, to wit:

157 In the United States Circuit Court of Appeals, Third Circuit.

A. Howard Ritter, Executor of the Last Will of William M. Runk, Deceased, Plaintiff in Error,

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant in Error.

Error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Acheson, Dallas, and Wales, JJ.

ACHESON, Circuit Judge:

This was an action brought by A. Howard Ritter, executor of the last will of William M. Runk, late of the city of Philadelphia, deceased, against the Mutual Life Insurance Company of New York, upon six policies of insurance, together amounting to the sum of \$75,000.00, all bearing date November 10, 1891, issued by the defendant company to William M. Runk upon his life. On the fifth day of October, 1892, Mr. Runk, with great deliberation, committed suicide by a pistol shot at a time when, as evidence indicates and the jury has found, he was of sound mind and able to understand both the physical and the moral character and consequences of his act of self-destruction. At the time of his suicide Mr. Runk carried insurance upon his life to the amount of \$500,000.00, the policies for which had been issued to him by a number of different companies. When the policies here in suit were taken Mr. Runk

already carried upon his life policies of insurance issued by other companies to the amount of \$315,000.00, of which \$135,000.00 had been assigned by him to his aunt, Mrs. Barcroft, as collateral security for moneys he owed her. At the same time that he effected the insurance which is the subject-matter of this suit Mr. Runk took out another policy of insurance upon his life in the defendant company for the benefit of his wife for \$20,000.00. Shortly thereafter, in the month of January, 1892, he took out in his own name additional insurance upon his life to the amount of

\$90,000.00 in other companies.

In connection with the facts already stated there was evidence upon the trial of this case tending to show that at the time the policies in suit were taken out Mr. Runk was insolvent; that his entire income did not exceed seven hundred dollars a month, out of which he had to support his family; that theretofore he had been engaged in and thereafter continued to be engaged in stock speculations on a large scale, in which he sustained heavy losses; that he had then begun a system of surreptitious withdrawals (amounting at his death to \$86,000.00) of his contribution of \$100,000.00 to the capital stock of the firm of Darlington, Runk & Co., of which he was a member, in violation of his partnership obligations, and which withdrawals he artfully concealed; and it appeared further that before the date of the policies in suit Mr. Runk had embezzled funds of the Protestant Episcopal city mission, of which he was treasurer, to the amount of about \$80,000.00.

On the day of his death or the day before Mr. Runk wrote a letter to the executor named in his will, Mr. Ritter, giving a particular account of his liabilities and a list of his insurance policies and directing the application of the insurance manager.

policies, and directing the application of the insurance moneys to his indebtedness. This letter and also other letters in evidence written by Mr. Runk just before he shot himself clearly evince that he deliberately committed suicide with the intention and in order that the insurance he had effected on his life might be collected by his executor and applied to the payment of his liabilities.

As the case went to the jury the only question of fact submitted to that tribunal was the question of the testator's sanity at the time he took his life. Nevertheless, error is assigned to the refusal of the court to affirm the plaintiff's first and second points, namely:

"1. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon with the intention of defrauding the company defendant issuing the same. 2. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

The assignments of error under this head raise the question whether there was any evidence in the cause which would have justified the jury in finding that the policies in suit had been taken out by William M. Runk with the fraudulent purpose of ending his life by his own hand. We think that there was such evidence and

that the affirmation of the above-quoted points would have been erroneous. True, it was not shown by the declarations of the insured or by other like positive evidence that at the time he effected the insurance he had formed the purpose to take his life. But such direct evidence of dishonest intention is rarely obtainable. Fraud-

160 ulent intention is seldom openly avowed, and ordinarily its existence must be deduced from the circumstances surrounding the particular transaction, apparent motive, and conduct before and after the event. Here we have a man, heavily in debt and insolvent, who had unlawfully appropriated to his own use trust funds. and was in constant danger of exposure, who had plunged into hazardous stock speculations, and who was already carrying an unusually large amount of life insurance, his income being grossly inadequate to pay the accruing premiums on that insurance and maintain his family. In the desperate state of affairs this man takes out additional life insurance, amounting (with the policy in favor of his wife) to the large sum of \$95,000.00, which he knew he could not maintain for any great length of time. Then, about two months later, we find him still further increasing his life insurance by other policies to the amount of \$90,000.00. Nine months thereafter, when in a sane condition of mind, he takes his life, with the expressed purpose of enabling his estate to realize upon his life policies, leaving specific written directions to his executor how to apply the insurance moneys in discharge of his liabilities. It is indeed the fact that Mr. Runk's suicide followed immediately after certain irregularities in his conduct of the business of Darlington, Runk & Co. had been detected and when full exposure of his misconduct was imminent. Still, however, it was for a jury to determine under all the circumstances when Mr. Runk first formed the design to take his life, and the evidence, we think, would have well warranted the finding that at the time he took out the policies in suit he was preparing for the worst, and that he then contemplated and had determined upon self-destruction should his stock speculations fail him in the near future. We are not, then, able to sustain

any of the assignments of error upon this branch of the case. The plaintiff's fourth point was in these words: "4. The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies." The defendant's first point was as follows: "1. There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind." The plaintiff's fourth point was refused and the defendant's first point was affirmed, and the court charged the jury that if the insured, Mr. Runk, was in a sane condition of mind at the time of his self-destruction his suicide was a defence to this These instructions are assigned for error, and the assignments raise the question whether the personal representative of one who, when sane, deliberately kills himself with the intent to secure to his estate the amount of insurance he has effected upon his life can recover the insurance money, the policy containing no provision with respect to suicide.

It is conceded that this precise question was not involved or decided in any case prior to the present one. In the cases brought to our attention where suicide, during sanity, by the person whose life was insured was held not to be a valid defense the policy was issued for the benefit of some other person or an independent interest, by assignment or otherwise, had been acquired by a third person. Not one of the decisions, we think, gives countenance to the idea that the personal representatives of the insured can recover where

the latter, whilst sane, deliberately commits suicide for the purpose of compelling payment of the insurance money to 162 his estate. That there can be no recovery in such case has been asserted by courts and judges whose expressions of opinion command great respect. In Moore v. Woolsey, 4 El. & Bl., 243, 254, Lord Campbell said: "If a man insures his life for a year and commits suicide within the year his executors cannot recover upon the policy, as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk; a stipulation that, in either case, upon such an event, the policy should give a right of action, would be void." In Hartman v. Keystone Insurance Company, 21 Pa., 466, 479, it was said: "Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone." This observation has been criticized, and, standing by itself, it may appear to be too sweeping. man's case, however, did not involve any question of insanity, and the court was speaking of suicide by a sane man. In Supreme Commandery, &c., v. Ainsworth, 71 Ala., 436, 447, the court said : " Death, the risk of life insurance, the event upon which insurance money is payable, is certain of occurrence. The uncertainty of the time of its occurrence is the material element and consideration of the contract. It cannot be in the contemplation of the parties that the assured by his own criminal act shall deprive the contract of its material element; shall vary and enlarge the risk and hasten the day of payment of the insurance money."

163 The above-quoted views, as applied to suicide by a sane man who kills himself to the end that his estate shall thereby be benefited by the enforcement of a policy of insurance on his life, are, we think, just and sustained by the soundest reason. It is a fundamental condition of the contract of life insurance, even if the policy be silent on the subject, that the insured, while in a sound mental condition, will not voluntarily destroy his life. The contract would lack mutuality of obligation if the insured at his own pleasure, by intentional self-destruction, could terminate the payment of the stipulated premiums and precipitate the payment of the sum insured. To sanction a recovery in such a case would be to reward fraud and encourage wrong-doing. In New York Mutual Life Insurance Company v. Armstrong, 117 U. S., 591, 600, Mr. Justice Field said:

"It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover in surance money upon a building that he had wilfully fired." Ther is, it seems to us, in principle no distinction between the instance thus put by Judge Field and the case now before us. It is concede that if at the time a policy of life insurance is obtained the insure has formed the purpose of ending his life, his suicide would defea a recovery. But what difference does it make when such purpose is conceived? Wilful self-destruction by the insured when he is sane is equally a fraud upon the insurer whether the purpose to commit the act is formed before or after the policy is taken. In our judgment the rulings of the court below upon the subject were right.

The remaining assignments of error relate to the instructions of the court as to what constitutes that degree of menta unsoundness which will relieve against what otherwise would be the consequence of self-destruction. Here it seems to be proper to cite at length the plaintiff's fifth point and the answer thereto and the accompanying observations made by the court. These were a follows: "5. If one whose life is insured intentionally kills himsely when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self-destruction will not of itself prevent recovery upon the policies."

"This is affirmed. I will say, however, that we must understan what is meant and intended by the term 'moral character of hi act.' It is a term which has been used by the courts, and is correctly inserted in the point, but it is a term which might be misured and the standard terms of t

derstood.

"We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in the case. If Mr. Runk understood what he was doing and the consequences of his act or acts to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he is to be regarded by you as sane. Otherwise, he is not."

In a subsequent part of the charge the court said: "I therefor charge you that if he was in a sane condition of mind at th time, as I have described, able to understand the more character and consequences of his act, his suicide is a defend

to this suit."

We are not able to discover in these instructions anything which the plaintiff in error can justly complain. The explanator remarks which the learned judge made in connection with his a firmance of the plaintiff's fifth point were pertinent and prope Upon the question of insanity the jury was plainly informed the to prevent a recovery it was not enough that Mr. Runk understoot the physical nature, consequence, and effect of his act of self-destrution, but that he must also have understood the moral charact

and consequences of the act, and that if he did not comprehend its wrongfulness he was to be regarded by the jury as insane; nor were the instructions of the court inadequate to the facts of the case. We think that they fully covered the question of insanity here involved. We do not perceive that in the instructions complained of there was any departure from the principles approved by the Supreme Court in the cases of Life Insurance Company v. Terry, 15 Wall., 580; Insurance Company v. Rodel, 95 U. S., 232; Manhattan Life Insurance Company v. Broughton, 109 U. S., 121, and Connecticut Mutual Life Insurance Company v. Akens, 150 U. S., 468. The charge, we think, conformed to the rulings in those cases.

We are of the opinion that this record discloses no error, and the

judgment of the circuit court is affirmed.

Filed December 2nd, 1895.

166 United States Circuit Court of Appeals, Third Circuit, September Term, 1895.

A. Howard Ritter, Executor of the Estate of Wm. M. Runk, Deceased, Plaintiff in Error,
v.

The Mutual Life Insurance Company of New York.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this

cause be, and the same is hereby, affirmed with costs. December 3, 1895.

GEO. M. DALLAS, Cir. Judge.

167 UNITED STATES OF AMERICA, sct :

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages, from one to one hundred and —, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of A. Howard Ritter, executor of the estate of Wm. M. Runk, deceased, plaintiff in error, v. The Mutual Life Insurance Company of New York, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and

Seal United States Circuit Court of Appeals, Third Circuit. affixed the seal of the said court, at Philadelphia, this sixth day of March, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

WM. V. WILLIAMSON, Clerk U. S. Circuit Court of Appeals, Third Circuit.

168 UNITED STATES OF AMERICA, 88:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which A. Howard Ritter, executor of William M. Runk, deceased, is plaintiff in error and The Mutual Life Insurance Company of New York is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of

the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY, Clerk of the Supreme Court of the United States.

170 [Endorsed:] Supreme Court of the United States. No. 924.
October term, 1895. A. Howard Ritter, executor, &c., vs. The
Mutual Life Ins. Co. of New York. Writ of certiorari.

171 In the United States Circuit Court of Appeals for the Third Circuit.

A. Howard Ritter, Executor of the Estate of William M. Runk, Deceased, Plaintiff in Error,

September Term, 1895. No. 2.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

It is hereby stipulated that the certified copy of the transcript of record in the above case, now on file in the Supreme Court of the United States, shall be taken as a return to the writ of certiorari

issuing out of the said Supreme Court of the United States, directing that the said record be certified by the said circuit court of appeals and removed into the Supreme Court of the United States.

> JOHN HAMPTON BARNES. R. C. DALE. GEO. TUCKER BISPHAM, Attorneys for Plaintiff. JOHN G. JOHNSON, C. P. SHERMAN, Attorneys for Defendant.

March 26, 1896.

(Endorsed:) No. 2. September term, 1895. U. S. circuit court of appeals for the third circuit. Ritter, ex'r, vs. Insurance Company. Stipulation as to record for return of certiorari to U.S. Supreme Court. Barnes, Dale, Bispham. Filed March 28th, 1896. Wm. V. Williamson, clerk.

172 UNITED STATES OF AMERICA, sct :

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof I have hereunto subscribed my name and

Seal United States Circuit Court of Appeals, Third Circuit.

affixed the seal of the said court, at Philadelphia, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one bundred and twentieth.

WM. V. WILLIAMSON, Clerk U. S. Circuit Court of Appeals, Third Circuit.

173 [Endorsed:] No. 2. September term, 1895. United States circuit court of appeals, third circuit. A. Howard Ritter, executor of the estate of Wm. M. Runk, deceased, plaintiff in error, vs. Mutual Life Insurance Co. of New York. Certified copy of consent of counsel as to return of writ of certiorari.

[Endorsed:] Case No. 16,214. Supreme Court U. S., October term, 1897. Term No., 142. A. Howard Ritter, executor, 174 &c., P. E., vs. The Mutual Life Ins. Co. of N. Y. Writ of certiorari and return. Filed April 8, 1896.